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CIS

SYSTEMS TO VERIFY AUTHORIZATION TO WORK IN THE UNITED STATES

HEARING

BEFORE THE

SUBCOMMITTEE ON

IMMIGRATION AND REFUGEE POLICY

OF THE

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

FIRST SESSION

ON

A NEW AND SECURE SYSTEM TO VERIFY THAT JOB APPLICANTS ARE AUTHORIZED TO WORK IN THE UNITED STATES

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SYSTEMS TO VERIFY AUTHORIZATION TO WORK IN THE UNITED STATES

FRIDAY, OCTOBER 2, 1981

U.S. Senate,
Committee on the Judiciary,
Subcommittee on Immigration and Refugee Policy,
Washington, D.C.

The subcommittee met, at 9:10 a.m., in room 412, Russell Senate Office Building, Hon. Alan K. Simpson (chairman of the subcommittee) presiding.

Staff present: Richard W. Day, chief counsel; Charles Wood, counsel; Donna Alvarado, counsel.

OPENING STATEMENT OF HON. ALAN K. SIMPSON, A U.S. SENATOR FROM THE STATE OF WYOMING, CHAIRMAN, SUBCOMMITTEE ON IMMIGRATION AND REFUGEE POLICY

Senator Simpson. The hearing will come to order, please.

Again I apologize for the accommodations. We have a bit of a crunch here, but considering that I am a chairman with only 2½ years' service it really is not too bad, actually. We have to scratch for room around this place. This is the Veterans' Affairs Committee hearing room. Since I chair that body I am able at least to have some consistent place to operate. So, bear with us.

This is the first of eight hearings in October. You know of the ones we have had in September. There is much to do as we continue to plow ahead.

I believe very strongly that enforcement of the immigration laws is in our national interest, and that an adequate level of enforcement simply will not be achieved without an effective program of sanctions against employers who knowingly hire illegal aliens.

We must have each of the three elements that we have consistently pursued: increased enforcement of our borders and internally; some type of sanction against employers who have a persistent pattern and practice of exploitation; and some form of an identification or verification system.

An effective program of employer sanctions must provide the employers with a new and secure system for verifying that job applicants are authorized to work in the United States. Without some new system, the existing documents would have to be used. Existing documents are extensively altered and counterfeited. Furthermore, genuine documents such as the birth certificate are readily obtained through fraud. So, there is a problem.

If any employer sanctions law were to require employers to have the expertise of the INS and to take substantial time to examine and authenticate documents, then the program would be most burdensome and of very questionable effectiveness. I have a hunch we would have to stop right there because of what the employers' reaction would be.

Employers could never be certain that their efforts would ultimately be regarded as adequate. They might well fear being prosecuted and then, as a result, seek to decrease their risk by not hiring members of certain ethnic groups, those who look foreign.

It is right here in this area that the Hispanic community has the most to lose and the most to fear—right here with this identifier system.

On the other hand, if an employer were fully protected just by confirming that the applicant had presented what appeared to be certain outstanding documents as suggested by the administration, unless he were certain that they were false, then the program might well lose its effectiveness.

I do not believe that an approach which would rely solely on the examination by employers of existing documents could adequately meet what I perceive as two of the basic goals: One, to provide security to the honest employer, but also to accomplish that in a way which would strain out illegal aliens.

There are two arguments usually presented against a new verification system. They are that the cost would be excessive and that such a system would pose a clear threat to privacy and other civil liberties. Let me make just one brief response to each of those.

Even if illegal aliens in the country numbered only 5 milllion—and I consider that a most conservative number for 1981—and even if only 1 percent of those persons held jobs which could be filled by American citizens and lawful resident aliens, then displacement would still be 50,000 people. The Congressional Budget Office estimates that each unemployed person received about $7,000 per year in unemployment and welfare benefits. The taxpayer burden of that situation, then, would total $350 million per year. And recall that this is only for a 1 percent displacement effect. We are assured that it may well be more.

With respect to civil liberty—something I am very conscious of, and I think those of you who know me, know that is true—I have difficulty understanding how changing the form, say, of a social security card—if we were to do that—would pose any risks to our liberty. I really look forward to hearing today's testimony on that issue.

Let me wind up with a quotation of Father Ted Hesburgh, the president of Notre Dame University and a most gracious and gentle gentleman, who was also chairman of the Select Commission of Immigration and Refugee Policy.

I served with him on the Select Commission, as did Senators Kennedy and DeConcini of this subcommittee, and Senator Mathias—those four of the Senate—together with four Congressmen and other very fine men and women.

I think we should carefully note the words of Father Ted Hesburgh, who was of course at one time Chairman of the U.S. Commission on Civil Rights. So, I would think that no one would deny his civil liberties credentials.

Father Hesburgh testified at the May hearing on the final report of the Select Commission and said,

> I also am persuaded that concerns about the abuse of privacy are not warranted. What protects our society and individuals against the abuse of privacy is the existence of conditions, habits, and laws which sustain our 1st, 4th, and 14th amendment rights concerning freedom and due process.

I share his views. Indeed, what protects and fosters all of the freedoms and other favorable conditions enjoyed by Americans is ultimately not the law which may be changed at any time, but rather our protection is in the shared values, customs, and traditions of the American people, which are the very fundamental sources of the law.

I am convinced that the American people, when presented with all the facts, will support what I feel is the only method we can offer to our countrymen to achieve control over immigration. I am also fully convinced that they will not permit the government to abuse them in the process—they certainly never have.

I look forward to today's testimony. We will proceed with the administration panel: Doris Meissner, Acting Commissioner of the Immigration and Naturalization Service; Malcolm Lovell, Under Secretary of the Department of Labor; and Mr. Sandy Crank, Associate Commissioner for Operational Policy and Procedure, the Social Security Administration, Department of Health and Human Services.

It is good to see you all this morning. If you will, please proceed in that order.

STATEMENT OF DORIS MEISSNER, ACTING COMMISSIONER, IMMIGRATION AND NATURALIZATION SERVICE

Ms. **Meissner**. Thank you, Mr. Chairman. I would ask that our statement be entered into the record. I would like to make a few brief opening remarks because I think we would like to reserve as much time as we can for your questions.

Senator **Simpson**. Without objection, so ordered.

Ms. **Meissner**. First of all, we agree with all of the points you made in your opening statement. It is clear that there are some very important interests and considerations involved in the identification issue. The desire for a new, secure identification system is one that is very attractive in this debate and one, of course, that the administration gave close consideration to in its deliberations.

Since last Wednesday's hearings, I checked on some of the work that has been done, and I want to emphasize several things.

I said earlier that a new identification system would take 3 to 5 years to develop and implement. In fact, according to work done by the Select Commission, any new system would take 7 to 9 years to implement.

I am sure you have the report by the Select Commission, and I think we can all agree that its survey of this issue is probably as complete as any that has been done.

But 7 to 9 years simply seems too long at the present time to wait in order to have an employer penalty system. What the administration did was balance time, cost, and the various policy considerations that you have set on the table.

I think it is also clear that this is very definitely a first step and an attempt to take a practical, realistic approach that can be implemented 6 to 12 months after legislation passes. While we welcome the opportunity to talk about more secure systems, I think we must remember that that such a system is far in the distant future even if one were able to make the resources available immediately.

As a result, we developed a practical, pragmatic, and realistic way to proceed.

The second point that I would make is that we do not envision enforcement of an employer sanctions penalty centering as much on the checking of actual documents as the debate tends to imply.

Again, it is quite clear that a large share of employers would comply voluntarily and that a great deal of the enforcement effort would be directed at employer education and more directly assisting employers who are in industries where illegal aliens are likely to be hired—assisting in screening the documentation and so on.

We, of course, recognize that there is a small core group of employers who wish to employ illegal aliens. Actual enforcement of this law would be targeted on that small percentage of employers.

In our enforcement efforts we believe we a great deal of information from fellow employers who are competitors and who have an interest in not seeing their competition hire at lower wages.

We believe we also will get considerable information from fellow employees who know that it is illegal to employ illegal aliens. We get that kind of information now. We have a wealth of data within the Immigration Service that we could use for enforcement purposes if we had the correct tools.

That kind of information and the ability to follow up on employers who continue to hire illegal aliens would be much more likely to produce effective results and, we think, would be very productive.

Thank you.

Senator SIMPSON. Thank you very much.

[The prepared statement of Doris Meissner follows:]

PREPARED STATEMENT OF DORIS M. MEISSNER

I am pleased to appear before this Subcommittee today to discuss the Administration's proposal for enforcing the proposed employer sanctions law. The Immigration and Naturalization Service (INS) is charged with preventing illegal aliens from entering or residing illegally in the United States. Over the past several years, the policy of the INS has consistently been to locate, apprehend, and remove illegal aliens employed in this country. Emphasis is placed on apprehending aliens in jobs which would be attractive to unemployed United States citizens and lawful permanent resident aliens.

The INS has long recognized the futility of attempting to intercept all illegal aliens at the border, thus depending solely on border interdiction as an effective deterrent. The borders are simply too extensive to seal effectively and Border Patrol resources are stretched to the fullest. In addition to its border interdiction efforts, therefore, the INS has undertaken an interior enforcement program to identify and remove those illegal aliens who have successfully found employment in the population centers of the United States. Thus, INS investigators are assigned principally to large metropolitan areas where concentrations of illegal aliens are known to live and work. In 1980 alone, INS investigators located over 143,000 illegal aliens in the interior of the country, 46 percent of whom were employed at the time of their arrest. Although the removal of 143,000 illegal aliens from the interior represents a significant number of successful investigations, INS recognizes the limited effectiveness of its present interior enforcement program. The availability of employment in this country at relatively high wages will continue to "pull" illegal migration. We cannot seal the borders, and efforts to apprehend and deport illegal aliens in the interior is a costly and, at best, partial solution. The only credible enforcement measure remaining is a prohibition on hiring illegal aliens. The Administration, therefore proposes legislation prohibiting employers of four or more employees -- that will cover 74 percent of all employees -- from knowingly hiring illegal aliens. Civil fines of $500 to $1000 would be assessed for each illegal alien hired. The Department of Justice will be authorized to seek injunctions against employers who follow a "pattern or practice" of hiring illegal aliens.

The Administration is opposed to the creation of a national identity card. But, to make employer sanctions a workable deterrent, the Administration recognizes the need for a means of compliance with the law that would provide an employer with a good faith defense if he or she examines documentary proof of eligibility to work. Acceptable proof of eligibility to work would be: (a) documentation issued by the INS, such as a permanent resident alien card or temporary worker visa, or any two of the following: (b) birth certificate, (c) driver's license, (d) Social Security card, and (e) registration certificate issued by the Selective Service System. In addition, the new employee and employer would sign a form certifying, respectively, that (1) the new hire is eligible to work in the United States, and (2) the employer has examined the specified identifiers and has no reason to believe the employee is not eligible to work. The form stating the citizen or alien status of the individual and the documentation presented would be retained by the employer and be available for inspection by INS and Labor Department compliance officers.

COOPERATION WITH OTHER AGENCIES

Department of Health and Human Services

The INS recognizes the likelihood that with employer sanctions there will be a significant increase in the use of fraudulent documentation by illegal aliens and by those who obtain employment for them, to assert their legal right to employment.

The sanctions plan provides that the documentation that would serve to establish a lawful right to employment will be designated by the Attorney General in regulations. A Social Security card will be one of the authorized identification documents. INS will continue to work closely with the Social Security Administration to make certain that such cards are only issued to legal residents and those otherwise authorized to accept employment under the law.

In its recent report, GAO concluded that reissuing cards will not correct the underlying conditions contributing to social security number and card misuse. For instance, it will not prevent individuals from obtaining social security numbers using false identity documents, or from using someone else's number and card. Furthermore, neither the Social Security Administration (SSA) nor other public or private entities would benefit appreciably from such reissuance. Thus, GAO questions whether the cost of reissuing the cards, which would be at least $850 million and could be as much as $2 billion, is justifiable. Additionally, from a logistical standpoint reissuance may not be practicable and may cause adverse public reaction.

The INS and the SSA are currently engaged in a program that will improve the capability of SSA personnel to screen illegal aliens who attempt to secure a Social Security number. The two agencies have shared information in the past regarding fraudulent applicants. The present efforts are geared towards improved in-service training for Social Security intake clerks and close cooperation regarding suspect fraudulent documentation.

Since 1978, the SSA has followed regulations which require applicants for new or replacement cards to appear in person at Social Security offices and establish their identification with birth certificates or other acceptable identifiers. Inquiries are made of the INS regarding certain applicants and the documentation presented. The Service provides an evaluation of questionable documentation and also responds to inquiries concerning the validity of the alien registration receipt card numbers and identities. The INS also advises the SSA of apprehended aliens where there is evidence of Social Security card misuse.

The limited capability of Social Security employees themselves to identify fraudulent documentation is being addressed by the SSA with INS cooperation. An informational package has been prepared consisting of examples of the critical elements to be focused on in identifying fraudulent documents and a videotape providing further guidance and procedures regarding screening applicants and the documents presented. These materials should be accessible to Social Security field employees by the beginning of calendar year 1982.

Beginning in early 1982, the SSA expects to issue social security numbers with a legend that distinguishes between numbers that are issued for work purposes and other numbers that are issued solely for non-work purposes, such as the opening of a bank account. Future requests for duplicate cards for non-work purposes will also be issued with the new non-work legend. This distinction should reduce the phenomenon of valid social security numbers issued for non-work purposes being presented as the basis for work eligibility.

The INS will work with the several States where the impact of illegal immigration is the greatest in improving the existing system of identification. INS will remain receptive to system improvements and innovations which appear to be both workable and cost-effective. We will continue to work with the Congress on any means of improving the current system of national documentation which is not cost-prohibitive.

We believe that this new law can and will be enforced without discrimination and without burdensome regulation. Since employers may rely on existing documents and will not be required to make judgments about the authenticity of the documents, they would have no occasion to make subjective and possibly discriminatory judgments about persons who may appear to be foreign.

We believe that the majority of employers are law-abiding citizens. As many as 75 percent of employers in the United States will voluntarily comply with the law and will refuse to knowingly hire illegal aliens. The objective of the INS will be to encourage this American tradition of voluntary compliance.

The Administration favors this approach because it can be implemented without delay and is the most cost effective.

We recognize the possiblity that there will be an increase in the use of fraudulent documents by illegal aliens for employment purposes. Therefore, INS will continue to work with the Social Security Administration and other federal, state and local agencies to improve existing systems of identification.

The dilemmas of immigration and refugee policy require prompt attention. These proposals are realistic; they require the creation of no new federal agencies, and they minimize the degree of government regulation of the workplace.

Thank you for the opportunity to appear before the Subcommittee today. I would be pleased to answer any questions you may have.

Senator SIMPSON. Mr. Lovell, will you proceed?

STATEMENT OF MALCOLM LOVELL, JR., UNDER SECRETARY, U.S. DEPARTMENT OF LABOR, ACCOMPANIED BY HERBERT COHEN

Mr. LOVELL. Thank you, Mr. Chairman.

I too request that my total testimony be incorporated in the record and I would briefly summarize.

Senator SIMPSON. Without objection.

Mr. LOVELL. Employer sanctions are the centerpiece of the administration's proposed measures for curtailing illegal immigration and regaining control over our borders. In addition, however, we believe that a work authorization system—one that is precribed by the Government, required for all employers subject to sanctions, and applicable to all job applicants—is a critical adjunct to sanctions legislation.

The Department of Labor believes that the need for a work authorization system, as included in the employer sanction proposal, is compelling. That is, while we believe illegal immigration can be effectively curbed only if employers are required to check the legal status of all job applicants and are prohibited from hiring illegal aliens, we also believe sanctions legislation is both fair to employers and enforceable only if employers are provided with a system for determining job applicants' work eligibility and for demonstrating their compliance with such legislation.

A work authorization system as a companion to employer sanctions is also essential to the welfare of workers. An easily used Government-prescribed and objective method for determining the legal status of all job applications, including but in no sense limited to those who are or who might appear to be foreign nationals, is needed to protect such workers from possible discrimination.

Without such a system, employers might seek to avoid violating employer sanctions by avoiding the hiring of foreign-looking or foreign-sounding job applicants. With such a system, employers have an objective and Government-credentialed mechanism for determining the work eligibility of all prospective employees.

In short, the work authorization system proposed by the administration was designed to meet three objectives:

To provide employers with an easily used and objective means of identifying persons entitled to work in the United States;

To protect U.S. citizens who are members of minority groups and aliens entitled to work here from possible discrimination by employers;

Finally, to provide the Government with a means of establishing employer compliance with, or violation of, legislation prohibiting the knowing employment of undocumented workers.

We believe that this work authorization system would provide the Government, employers, and workers with a nondiscriminatory, rapidly available, easily used, and inexpensive mechanism for complying with, or enforcing, sanctions legislation.

Although we are sensitive to the problem of fraudulent documents or imposters, we believe that the strong penalties that we have also proposed for such willful violation of our immigration laws are not only an effective means of dealing with that special problem, but also an appropriate enforcement strategy.

Thank you.

Senator SIMPSON. Thank you very much, Mr. Lovell.

[The prepared statement of Malcolm Lovell follows:]

Prepared Statement of Malcolm Lovell

Mr. Chairman and Members of the Subcommittee:

I appreciate the opportunity to appear before you again to discuss the illegal immigration component of the Administration's proposed immigration and refugee policy reform package.

This Administration is deeply concerned by the problem of continuing large-scale illegal immigration. In the September 30 hearing of this subcommittee, we testified to our belief that legislation prohibiting the knowing employment of aliens without work authorization is essential to effective enforcement of our immigration laws.

Employer sanctions are the centerpiece of the Administration's proposed measures for curtailing illegal immigration and regaining control over our borders. In addition, however, we believe that a work authorization system--one that is prescribed by the Government, required of all employers subject to sanctions, and applicable to all job applicants--is a critical adjunct to sanctions legislation.

The Department of Labor believes that the need for a work authorization system, as included in the employer sanction proposal, is compelling. That is, while we believe that illegal immigration can be effectively curbed only if employers are required to check the legal status of all job applicants and are prohibited from hiring illegal aliens, we also believe that sanctions legislation is both fair to employers and enforceable only if employers are provided with a system for determining job applicants' work eligibility and demonstrating their compliance with such legislation.

A work authorization system as a companion to employer sanctions is also essential to the welfare of workers. An easily used, Government-prescribed and objective method for determining the legal status of all job applicants, including but in no sense limited to those who are or who might appear to be foreign nationals, is needed to protect such workers from possible discrimination. Without such a system, employers might seek to avoid violating employer sanctions by avoiding the hiring of "foreign-looking" or "foreign-sounding" job applicants. With such a system, employers have an objective and Government-credentialed mechanism for determining the work eligibility of all prospective employees.

In short, the work authorization system proposed by the Administration was designed to meet three objective:

- to provide employers with an easily used and objective means of identifying persons entitled to work in the United States;
- to protect U.S. citizens who are members of minority groups and aliens entitled to work here from possible discrimination by employers; and
- to provide the Government with a means of establishing employer compliance with, or violation of, legislation prohibiting the knowing employment of undocumented workers.

The Administration's work authorization proposal would achieve those three objectives by placing on employers or new employees the following requirements. The Administration is explicitly opposed to the creation of a national identity card. The employer sanctions proposal would require employers to examine certain existing documents providing evidence of work eligibility, as determined by the Attorney General--for example, any two of the following, a U.S. birth certificate, a driver's license, Social Security card, registration certificate issued by the Selective Service System, or permanent resident alien card. Second, new employees and their employers would be required to sign a Government form certifying, respectively, that the employee is a citizen or alien entitled to work and that the employer has examined two specified documents and has no reason to believe that the new employee is not eligible to work in the United States. Finally, the employer would be required to retain the form stating the employee's citizen or alien status and specifying the documents examined by the employer for inspection by the Immigration and Naturalization Service or Department of Labor compliance officers.

We believe that this work authorization system would provide the Government, employers, and workers with a nondiscriminatory, rapidly available, easily used, and inexpensive mechanism for complying with, or enforcing, sanctions legislation. Although we are sensitive to the problem of fraudulent documents or imposters, we believe that the strong penalties that we have also proposed for such willful violation of our immigration laws are not only an effective means of dealing with that special problem, but also an appropriate enforcement strategy.

In particular and above all, we do not wish to propose a cure that may be worse than the disease. In our view, willful flouting of immigration laws through deliberate and calculated fraud, by either aliens or employers, should be subject to heavy penalties. However, we also believe that such penalties should be aimed specifically and only at such behavior. The Department of Labor believes that a work authorization system based on existing documentation, applying to all job applicants without exception, and requiring employee and employer certification of work eligibility is both a practical and a reasonably effective and secure mechanism for regulating the entry of undocumented aliens into the U.S. labor market at this time.

This concludes my prepared statement. I would be glad to answer any questions you may have.

Senator **Simpson**. Mr. Crank, please?

STATEMENT OF SANDY CRANK, ASSOCIATE COMMISSIONER FOR OPERATIONAL POLICY AND PROCEDURES, SOCIAL SECURITY ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES

Mr. **Crank**. Mr. Chairman, with your approval I also would like to submit my prepared statement for the record and summarize it orally.

Senator **Simpson**. Without objection, it is so ordered.

Mr. **Crank**. The social security number system and the social security card were never intended to be relied on by themselves as foolproof personal identification. Historically, social security numbers have been easy to obtain because there was no need for a secure card for Social Security Administration purposes.

The Federal Government originally pledged not to use the information people provided when applying for a number for other than SSA purposes. In recent years, as we all know, the use of the SSN for other Government and private sector purposes has grown steadily, accompanied by growing concerns about potential abuses of civil liberties and personal privacy.

Some of the expanded uses of the social security number have been mandated by statute, such as the 1972 amendments to the Social Security Act, requiring SSA to issue social security numbers to legally admitted aliens. The 1976 Tax Reform Act authorized States to use the social security number in many State programs for taxation, public assistance, and motor vehicle programs.

Social security has also been required by law to strengthen the issuance process for the social security number and we have moved to increase the automation of the issuance system.

We are already planning additional steps in the near future, such as including a legend indicating, "Not valid for employment" on the face of social security number cards which are issued to aliens for nonwork purposes, speeding up the issuance process and providing additional training for our employees who handle social security number applications to enable them to detect fraudulent documents.

To go farther than we are presently planning to go would raise a number of problems. We simply do not know of any way to make an absolutely tamper-proof or counterfeit-proof card, and even if it could be developed, it could only be as valid as the documents it is based on and they themselves, as you have indicated, may not be reliable. In other words, dealing with the social security number card is not really getting at the problem.

As a practical matter, using the social security number card for positive identification would pose administrative problems and potentially high costs for both the Government and employers who had to verify that the card presented belongs to the person presenting it. Reissuing social security number cards would be very expensive if it is going to be effective at all.

To verify the identity of 200 million people and reissue cards made of banknote paper would cost close to $1 billion and require over 50,000 Federal employees. More gradual reissuance would cost less initially, but also be less effective.

The basic concern that has been raised about making social security number cards a personal identifier is that it could increase the fear of abuse of individual privacy and freedom.

This concern arises from the fact that a single, universal identifier would facilitate the linkage of data stored on individuals in several places and could lead to the creation of a national data bank on all citizens.

There is no question that the issue this subcommittee is focusing on is a serious one, and we in the Social Security Administration intend to work with our colleagues in the Justice Department and in the Labor Department to make sure that we have the most effective use of the social security number system to help verify work authorization.

We believe, however, that to go farther in the direction of making the card a national identity card would impose sanctions on millions of law-abiding American citizens instead of focusing our attention on those who are abusing the law.

Thank you for your attention. I will be happy to answer questions.

Senator SIMPSON. Thank you, Mr. Crank.

Mr. Crank, in the process of our deliberations we are finding ourselves coming back to the discussion of a revised, updated, counterfeit-resistant, tamper-proof social security card.

You heard Ms. Meissner's testimony about the period needed to implement an identifier system. She talked about 7 to 9 years for such a purpose. Does the Social Security Administration agree with that estimate of a 7- to 9-year period for a change to be effected?

Mr. CRANK. Mr. Chairman, if we were to use our present process and not include radical changes in the nature of a card, such as a photograph, fingerprints and those kinds of things, we could reissue cards on banknote paper in about 5 years. We would agree with Ms. Meissner that if a more radical change in the process is envisioned, that estimate of time is probably correct.

Senator SIMPSON. What problems would you foresee for the Social Security Administration if the style of the card were modified to reduce the possibility of counterfeiting and tampering, even though security has never been the principal part of the mission of the cards?

Mr. CRANK. First of all, as I indicated, if we simply changed the stock on which the card is printed, that does not present major problems other than costs for us.

But for that to have some reliability and effectiveness, we think we have to consider the source of the information that is put on that card. Most of the information that is in social security records is based on people's declarations of their identity, their age, their birth places because prior to the early 1970's we did not require verification of identity to issue a social security card.

If by "style" of card you are including such things as photographs, such things as fingerprints, complete verification of identity prior to reissuance, the implication on social security are major ones in terms of operational capacity and they are major in terms of cost.

Senator SIMPSON. I am wondering about that figure of $850 million or $1 billion. We all, after brief exposure know how the system works around here. It is very simple, if a person does not like something, he will say that the cost is absolutely prohibitive and excessive.

If you like something, you say it is going to save you lots of bucks. That is the way it works, just like building a house when the architect is speaking.

This estimate of $850 million or $1 billion is based upon a replacement of how many cards?

Mr. CRANK. It is based on the replacement of approximately 200 million cards.

Senator SIMPSON. Well, how many have been issued since social security began?

Mr. CRANK. We have about 200 million that are active cards in America today. In order for a system to be effective, we believe you should have a single card, not two kinds of cards that are both valid.

Senator SIMPSON. What is the number of those now receiving social security payments under that system?

Mr. CRANK. How many people?

Senator SIMPSON. How many are receiving benefits in that system?

Mr. CRANK. In the neighborhood of 35 million people.

Senator SIMPSON. 35 million. It is my understanding that at the present time it is not unlawful to produce a counterfeit or a facsimile social security card as long as the official seal is absent, is that true?

Mr. CRANK. That is correct, Mr. Chairman. There is no penalty for reproducing the card. The penalty is for misuse of a card.

Senator SIMPSON. Does that cause any concern in the Social Security Administration. Do you believe that a legislative change will be necessary there?

Mr. CRANK. Yes, it does cause us concern and a legislative change is under consideration within the Administration.

Senator SIMPSON. Would you share with us what that might be—any specifics?

Mr. CRANK. The general nature of it would be to provide for penalties for reproduction and a possible increase in penalties for misuse.

Senator SIMPSON. If it would cost this large figure to go to a new system with 200 million cards, what would be your view about what the system would cost if only newly issued cards were included, regardless of whether you agree with that proposal or not? What then are we talking about in cost?

Mr. CRANK. If you permit me just a moment, I think I can get that figure for you.

If we were to go only for prospective issuance on banknote-type paper, we estimate it would cost $13 million per year, and about 800 additional work years. Most of that would be reflected in the higher cost of the banknote-type paper and additional interviews for younger people, that we do not now interview.

Senator SIMPSON. So there we are talking about instead of a figure of $850 million to $1 billion, we are talking about a figure of $13 million.

Mr. CRANK. Per year.

Senator SIMPSON. Per year.

Mr. CRANK. Per year.

Senator SIMPSON. Would that figure decrease or increase in later years? Would it fluctuate, or would it remain rather stable, that figure?

Mr. CRANK. It would remain fairly stable in constant dollars; of course it would be influenced by inflation.

Senator SIMPSON. This is one of the things we have discussed and considered in the subcommittee in grappling with the cost of a new card system. The estimates are much lower if we say that the new cards are to be issued only on request or when a person wanted to change jobs, or for newly issued cards. So, that is important to us.

If the Social Security Trust Fund was not required in itself to finance and upgrade the social security card, would you oppose its development?

Mr. CRANK. Yes, we would still oppose it.

Senator SIMPSON. Why would that be?

Mr. CRANK. We feel that, No. 1, we have been and are in the process of improving the issuance and use of that card in ways that will make it most effective for social security purposes.

We also have a concern about putting an added burden on the Social Security Administration. Given our current systems problems and the programs that we now have, the responsibility inherent in a "secure" card system would be a very great burden for us.

Senator SIMPSON. And yet, you have never been concerned before about the issue of security. I am aware of the reasons for that. That is, when a person reaches the time for seeking of benefits, there is a rather thorough screening process. Is that correct?

Mr. CRANK. That essentially is correct. However, in the early 1970's we did move to put more stringent requirements on the social security number issuance process and began requiring additional evidence of people applying for social security numbers.

Senator SIMPSON. Let us go back to numbers because we all play with those magnificently here. You give us a figure, say, of $850 million and that, I assume, is the total cost of what it would be to do this.

Mr. CRANK. In constant dollars, yes.

Senator SIMPSON. In constant dollars. Then you mentioned the figure of $13 million per year. Could you break down the per year figure included within the $850 million, how does that work out?

Mr. CRANK. Of the $850 million the first year cost would be approximately $180 million if we were going to do this over a 5-year time frame; $180 million and 11,000 work years.

If we were going to take 10 years to do it, it would take 5,800 work years for the first year and $94 million, and the remainder would be spread out over the remainder of the 5- or 10-year period.

Senator SIMPSON. I appreciate having that.

You state that there is no such thing as a noncounterfeitable card, but you also state that it is possible to make cards which are very difficult and costly to tamper with or to counterfeit. Is that not all we would require, rather than a "noncounterfeitable" card?

Mr. CRANK. Yes, I think that is what you are talking about. The point of my comment was simply to make sure that people understand that a tamper-proof or counterfeit-proof card does not guarantee that there will be no counterfeit cards.

Senator SIMPSON. We have, after all, no such thing as noncounterfeitable currency either. And yet, the counterfeiting of currency is at a very manageable level; is that not so? I believe that to be so. We seem to manage that very well and have a manageable problem.

So, I am interested in developing that. We will do so in the course of the hearings.

I might ask Justice, in any deliberations—and I know you have grappled with it in the task force—did you ever discuss the financing of a card through some source other than Government funds—even through a payment, say, by the recipient? Was that ever discussed?

Ms. MEISSNER. Yes. In fact, a user-fee approach does appear in other parts of the illegal immigration package, for instance, in the legalization proposal.

But it was not discussed in the context of the counterfeit resistant card, or improving the social security card.

Senator SIMPSON. So, you did discuss a user fee at one time. I am not trying to come back and say what you should have done. Your discussion process is what I am interested in. That was discussed.

Ms. MEISSNER. It did arise, yes.

Senator SIMPSON. Do you remember any amount of such fee that was discussed, $5, $10?

Ms. MEISSNER. I do not recall. Given the other discussions around a user fee, it probably would have been more in the neighborhood of $10 to $15.

Senator SIMPSON. Mr. Crank, we often get to talk to Justice and Labor, but we do not get you here. That is why I come back with several more questions. By the way, your staff or your people have been most helpful to us on the subcommittee and we are appreciative of that.

In the discussion of this issue we were advised that one of the problems with the social security system in trying to make it more workable is this issue of so-called scrambled earnings, when more than one stream of social security taxes has been received for a single number. That causes apparently one of the most time-consuming tasks in your agency since it must determine which stream of income resulted from the jobs of the true owner of that number.

A member of the Social Security Administration staff indicated that if a new card were issued to all the workers, that this unscrambling would have to be done, and that this represents part of the tremendous cost that is proposed, this $850 million or $1 billion.

And yet, we are informed too that this unscrambling would really have to be done anyway somewhere along the line if new cards were not issued, although perhaps at a later date.

Do you have any figures on how much of the $850 million estimate is represented by this unscrambling procedure which would have to be accomplished if the system is to become appropriate, especially as we pursue possible changes in social security—painful as they may be?

Mr. CRANK. Mr. Chairman, the $850 million estimate that we provided does not include any cost of unscrambling earnings that have been reported to us. That entire cost is made up of administrative costs incurred in the reissuance process itself. There are no components of it that have to do with unscrambling the earnings records.

Senator SIMPSON. Just for my own information, will unscrambling be part of a significant review by the Social Security Administration?

Mr. CRANK. Yes. We are working on unscrambling earnings, have been doing that and will continue to do that. But the task of unscrambling earnings does not play a great role in our considerations of a more secure card.

Senator SIMPSON. But it is a very costly procedure, is it not?

Mr. CRANK. It is a costly procedure, and much of the scrambled earnings do not come from the kinds of problems that I think this subcommittee is trying to address. They come from a lot of other problems in recordkeeping.

Senator SIMPSON. I am sure that issue will be discussed when we get into possible changes in social security.

Mr. CRANK. I am sure it will.

Senator SIMPSON. I know that some other poor soul will be chairing those hearings and hope it will not be me.

Under the administration plan reputable employers would not be subject to sanctions for hiring an illegal alien if the applicant had presented certain documents.

Many believe that those documents are easily counterfeited, especially the specific ones that were mentioned by the task force in the President's report. They are easily obtained, easily counterfeited. We certainly have evidence of that, as you know.

If that is the case, it would then seem that illegal aliens could avoid being refused employment simply by presenting false documents.

I know that you indicated that you feel that employers, the majority of employers, will act honestly and I share that view, I do. That is not a naive observation, it is one based upon historical fact in this country.

But do you believe that most illegal aliens will or will not present false documents, given the opportunity? I would be interested in your view.

Ms. MEISSNER. No one can make that projection with much precision. It is certainly true that the documents we are talking about are readily obtainable and are counterfeitable.

One question that we do not know the answer to is the extent to which illegal aliens would willfully enter into what will clearly be a criminal activity, obtaining and using fraudulent documents. Today where there is no penalty for the employer there is not much threat to an alien for that kind of activity.

Under an employer sanctions law where those documents are going to be scrutinized our sense is that some portion of the illegal alien population will not go to the pain and expense involved in getting fraudulent documents.

For those who do, there arises the question of careful enforcement and how it is that we deal with employers and aliens who engage in that activity.

It is illegal, of course, to obtain fraudulent documents. So, one could prosecute an individual for obtaining fraudulent documents and, of course one can prosecute those who produce fraudulent documents.

In the case of illegal aliens, we would be more likely to deport the alien than to prosecute him for that use of fraudulent documents. On the other hand, with repeated, aggravated use of fraudulent documents, we most certainly would prosecute. So, there is some handle on that aspect of the issue.

As far as the employer is concerned, an employer under this system would not have the responsibility for determining if documents are fraudulent. But once it was pointed out to the employer that certain employees were using fraudulent documents, we most certainly would hold that employer responsible.

What we envison initially, of course, is increased use of fraudulent documents, but we also will begin to build a record with employers, and within the Government directed at the fraudulent document industry. Enforcement will be directed against continued and aggravated perpetuation of that system both among the alien and the employer population.

Senator SIMPSON. Indeed, Justice has determined that it is an industry, has it not, the presentation and preparation of forged documents, counterfeit documents, green cards and social security. That is indeed an industry, is it not?

Ms. MEISSNER. We believe that it is an ad hoc entrepreneurial activity. It certainly does not rise to the level of organized crime. But it does exist and it is something that we plan on turning our enforcement efforts toward more actively than we presently do.

Senator SIMPSON. A person can make a buck doing it, I guess, would be what I would say, and leave off the industry part. We know that it is done, and it is done for profit.

Mr. Lovell, in your testimony you stated that although you are sensitive to the problems of fraudulent documents, the strong penalties that you propose for a willful violation of the immigration laws are not only an effective means of dealing with that problem, but an appropriate enforcement strategy.

The problem I remain concerned about involves the usual case of an employer trying honestly to comply with the law. The employers in such case are not liable.

I would ask you, are the strong penalties that you refer to, to fall on the employees? If so, you might give me your idea of what they might be. As Ms. Meissner said, illegal aliens are already subject to criminal penalties for their presence here in the United States. However, these are extremely rarely imposed and therefore have no deterrent effect whatsoever.

Do you anticipate a greatly increased prosecution of the illegal aliens themselves as part of your employer sanctions program in order to deter use of false documents? I would be interested in that.

Mr. **Lovell**. I think that the response that Ms. Meissner gave is an accurate one. I would presume in most instances, the illegal alien would be returned to his home country rather than face criminal prosecution unless that individual previously was apprehended violating the law.

The major penalty would be against the employer for violation. Of course, any violation that was discovered would be subject to the initial fine of $500, and a subsequent fine of $1,000, per employee, which does amount to quite a large sum of money for a large number of violations.

Senator **Simpson**. Ms. Meissner, in your testimony of September 30 you indicated that part of your expectation that the administration plan would work without a new verification system was based upon a pilot program known as Operation Cooperation, involving 60 companies in Los Angeles and Denver with about 60,000 employees. The companies voluntarily assisting in discovering and replacing illegal alien employees.

Do you have any estimate of the number of additional INS employees which you would require if the INS were to have that degree of regular contact with employers in general?

Ms. **Meissner**. I do not have an estimate for you. When an employer sanctions law is passed, there will be a great deal of incentive for both employers and the Immigration Service to work together.

We see that kind of contact as being an important part of our enforcement responsibility in carrying out the program.

We have gone about as far as we can go under the present circumstances without an employer penalty. There is a limited effect that we can get because there is not much incentive for employers to cooperate beyond a certain point. However, it seems to me, that the resources would be part of our regular program.

Senator **Simpson**. Well, it would seem to me that a tremendous number of additional employees would be required to maintain that high degree of contact. I think it is a remarkable project. But it would be a very difficult thing manpowerwise to pursue for the INS, regardless of how laudatory it may be in a small scale program.

Ms. **Meissner**. Our sense is that one can get a great deal of mileage out of one or two contacts with a particular company. We really need to train someone on site to provide that function and check in periodically after the initial survey.

Senator **Simpson**. Could you very briefly describe the ADIT system and its effectiveness, cost, and workability?

Ms. **Meissner**. The ADIT system is an effective, secure card system. The ADIT card is one that permanent resident aliens in the United States receive. We have issued about 2 million ADIT cards since the program began in 1977 and have invested over $20 million both in development and operational cost. This year we will issue about 1 million cards.

It is an expensive system. The average cost is about $3.50 per card. We are not satisfied with the turnaround time as it still takes about 1 month from the time we receive the ADIT materials until we actually turn out the card. However, the card's security is sufficiently sophisticated—the fingerprints, inscription code, the photograph, and so forth. We believe the ADIT card is about as secure a card as one can produce, consistent with practicality.

ADIT cards will be an important element in enforcing employer sanction, and we are looking right now at a whole range of ways to increase our ability to produce the cards both in relation to a legalization program and to the effective enforcement of an employer sanctions program.

Senator SIMPSON. But you would say for the purposes of the record that it works?

Ms. MEISSNER. We believe it works, yes. It works almost too well, would be my message, in terms of the technical security features in the card.

Senator SIMPSON. We will take a dozen of those, then, if it works that well.

If you would present us with whatever documentation you have as to that system, that would be helpful to include in the record, if you will.

Ms. MEISSNER. We would be pleased to do that.

Senator SIMPSON. The current status, numbers, and so on.

Just a couple more questions. The Attorney General stated that the administration proposal would require the employer to sign a form certifying that he has examined the specified identifiers and had no reason to believe the employee not eligible to work.

I would ask what might be the meaning of that second requirement, that the employer has no reason to believe that the employee is not eligible to work. Would you please give us an example of a reason an employer might legitimately have for suspecting an employee's eligibility after examining the required identification?

Ms. MEISSNER. There are several things that could lead a conscientious employer to raise questions. If he were presented with a Xeroxed birth certificate where there was clear whiting out of names and retyping. That kind of a document, even though it might have an official seal on it, or whatever, I think it would be reasonable to say that he ought to question it.

But more likely the situation would be one where employers had previously been informed that particular individuals were here in illegal status, had been deported and came back to be reemployed. That is a very, very common pattern among employers of illegal aliens. We apprehend them, we send them back, they come back and take the same job again. That is an obvious situation where an employer would be culpable.

By the same token, we have some employers who are clearly involved in linking up potential employees with fraudulent document suppliers. They do this not necessarily because these documents are now needed in their own workplace but for the purpose of obtaining housing and the other things that one needs to function effectively in society.

There are all kinds of areas—aggravated offenses, participating in illegal immigration, and so forth—that employers are involved in, and those are the kinds of employers against whom we would need to enforce this law.

Senator SIMPSON. Just a final question, kind of half to Mr. Crank and Ms. Meissner. You stated that the INS will work with the State and local agencies to improve existing systems of identification. You might share with us as to any formal programs in existence now or planned for the future to encourage the States to improve their birth certificate and driver license issuance process, and the counterfeit and tamper-resistant quality of the documents themselves.

Is there any consideration being given to providing an amount of Federal support for a birth-death records matching system, including a Federal clearinghouse operation which would notify all States of each death so that birth records might be inscribed with the data concerning the death? That is one question.

Also I was most interested in the comments by the the Social Security Administrator, the other day, saying that there were millions of dollars that are going out to people who are deceased, under the system and that there has been no method prior to this of matching those who have died with a Federal data bank system. Therefore current payout lists include literally thousands and thousands of people who are deceased.

It would seem to me we would do much better if we came to a birth-death record payment matching system. What are Justice's thoughts on that, and your thoughts on that?

That in itself will be helpful not just for the purpose of controlling illegal immigration, but for controlling the rupturing of the social security system.

Ms. **Meissner**. I do not know where we are with regard to that kind of a match system. The problem of the security of base records, and particularly the issuance of birth certificates by States, is one that has been of concern to the law enforcement community both at the Federal and the State level for many, many years.

Our view of that issue with regard to employer penalties is that there would be additional impetus in the law-enforcement community to work more closely, particularly with the key States that are involved, in improving those systems.

Mr. Crank may have additional information.

Mr. **Crank**. Yes. The recent experience certainly has given us some added impetus if we did not have it before, in looking into the feasibility of that kind of a matching operation.

Earlier this year, in implementing the 1980 amendments to the Social Security Act—having to do with nonpayment of social security benefits to prisoners—we had some firsthand experience with trying to match up with State records in the penal system and found that was very, very difficult. Many States did not have automated systems and we expect that we would encounter the same kinds of problems in trying to do that with vital statistics records, but to a greater degree.

That does not mean that something should not be started, and I think we will definitely want to be looking into that. Whether or not the best approach for the Government is an SSA-only approach, or some integrated approach to serve wider Government needs, has yet to be determined.

Senator **Simpson**. Thank you.

I might just ask one question of you, Mr. Lovell, so you will not feel neglected at all.

Mr. **Lovell**. I did not feel badly at all, Senator.

Senator **Simpson**. The other day I asked you about the Farm Labor Contractor Registration Act, which already provides rather severe penalties for the knowing employment or referral for employment of illegal aliens by farm labor contractors.

How is worker identification handled under that legislation? In enforcing that legislation, has there been difficulty in determining knowledge on the part of the farm labor contractor concerning the alien's status? Have there been any complaints that you are aware of about discrimination from would-be employees in that situation? If you could respond to that.

Mr. **Lovell**. In terms of the first part of the question, the system is very similar to the one that is being recommended by the administration; namely, the use of a variety of existing documents. Herbert Cohen is with me. Would you like to address those two?

Senator **Simpson**. If you would, and please take the microphone, Mr. Cohen.

Mr. **Cohen**. Herbert Cohen. Thank you, Mr. Chairman.

As Mr. Lovell indicated, our system is similar to what is being considered. Under the law, a farm labor contractor is prohibited from recruiting and employing, or utilizing with knowledge aliens not authorized employment.

The documents we identify in our regulations, at least initially after the 1974 amendments, provide essentially for a birth certificate, passport, or, for aliens various INS documents.

With regard to the latter part of your question, we did encounter problems as a result of the mobility of the migrant work force where, for example, workers residing in Florida who went up into Virginia and Maryland, without birth certificates in their possession at that time, were being denied opportunities for employment.

We concluded at that time that U.S. citizens were being denied employment opportunities. We did change the regulations last year, and now accept baptisimal certificates, military discharge papers, tribal enrollment cards, and we have instituted the use of a declaration of citizenship which is in effect an affidavit which can be obtained at the local employment service.

So, if an individual does find himself in that position away from his residence, unable to obtain documents, they can go to the nearest employment service office, and complete this declaration of citizenship. A copy would be retained there, and the individual would carry a copy with him as proof of citizenship. That has been working fairly well as far as we know.

Senator **Simpson**. How many take advantage of that, or use that system?

Mr. **Cohen**. Well, it has only been in effect, as I say, since last year. We have not yet had an opportunity to carefully evaluate the extent of its use.

Senator **Simpson**. If you would for the record furnish us the number of people that have applied for that, and the number of people then who subsequently have ended up using that kind of an identifier, which it surely is, we would appreciate that.

Mr. **Cohen**. We will be glad to do that. Thank you.[1]

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[1] Information is not available.

Senator **Simpson**. Thank you very much. I appreciate the panel's participation, thank you all.

[The prepared statement of Sandy Crank follows:]

PREPARED STATEMENT OF SANDY CRANK

Mr. Chairman, I welcome the opportunity to appear before this subcommittee on behalf of the Department of Health and Human Services to discuss the possible use of the Social Security card as an identity document to verify work-authorization for aliens. The Social Security Administration has been involved in the work that preceded the announcement of the Administration's proposals in this area and fully supports the concept of requiring two pieces of documentation, one of which would be the Social Security card, from all job applicants.

In this statement, I would like, first, to briefly review the use of the Social Security Number, or SSN, for Social Security purposes. I will then discuss some of the uses of the SSN in other Federal and State programs and the steps that have been taken to tighten the SSN issuance process. Finally, I will describe some of the issues associated with using an upgraded Social Security card as an identification document.

Purpose of the Social Security Number and Card

Following the passage of the Social Security Act in 1935, the Social Security number was devised administratively as a way to keep track of the earnings of people who worked in jobs covered under Social Security. The purpose of the Social Security card was to show that a number had been issued to the individual and to provide the employer with the proper Social Security number for reporting earnings for the individual.

The Social Security Board decided in 1936 that Social Security numbers should be issued based only on an individual's allegations about his or her name, date and place of birth, sex, parents' names, address, etc. There were several reasons for this decision.

First, because some 30 million numbers had to be issued in a short period of time, the process had to be as simple as possible.

Second, there was little or no real incentive for an individual to try to obtain more than one SSN for the purpose of defrauding the Social Security program because benefits are dependent on many years of covered employment. Manipulating earnings over a lifetime between more than one SSN "identity" to gain more benefits than could be received under one identity was theoretically possible, but thought to be unlikely in practice.

Finally, at the inception of the Social Security program there was a great deal of public concern about the implications of the Government keeping track of people on a large scale, and rigorous issuance procedures for Social Security numbers could have appeared to substantiate these concerns.

At that time, in addition to talk of the danger of a "police state," employees were concerned that employers might misuse information in Social Security records as to their age, race, family history or previous work history. Employers also were concerned about the use that might be made of information they provided. To meet these fears, the Social Security Board issued a press release on November 23, 1936, the day before applications for Social Security account numbers were distributed to the public, stating that ". . . the information required of any worker on this (application) Form would be regarded as confidential within Government sources. Only the worker himself, or his immediate family, or Government employees having official responsibility in connection with the social security files will have access to this information."

In its very first regulation, issued on June 15, 1937, the Social Security Board subsequently formalized its pledge that information obtained for issuing SSN's would be kept confidential and only used for Social Security purposes. This pledge of confidentiality has been an important factor in the cooperation which employers and employees have shown over the years in providing required information to SSA. There is serious question whether this high level of cooperation would continue if the SSN and SSN card were to become a general purpose personal identifier.

Other Government Use of the SSN

In spite of the narrow intended purpose of the Social Security number and card and the lack of rigorous verification of identity in the number issuance process, use of the familiar Social Security card and number as a convenient, if informal, means of identifying people has grown over the years since the beginning of the program.

In 1961, the then Civil Service Commission (CSC) established a numerical identification system for all Federal employees using the SSN as the identifying number. The next major non-Social Security related use of the SSN occurred in 1962, when the Internal Revenue Service adopted the SSN as its official taxpayer identification number. The computer revolution--and the simplicity of using a standard number that most people already had for computer recordkeeping--provided the incentive for the widespread switchover within the Federal Government to the SSN as a means of identifying people. For example, in 1967 the Department of Defense started using the SSN in lieu of the military service number to identify personnel in the Armed Forces. After 1962, use of the SSN for computer and other recordkeeping systems spread throughout State and local governments, and then to banks, credit bureaus, hospitals and educational institutions.

The Social Security Amendments of 1972

The first statutory expansion of SSN usage came in 1972 when Congress amended the Social Security Act to require that SSA issue numbers to all legally admitted aliens authorized to work in the United States at entry and take affirmative steps to issue SSN's to anyone receiving or applying for any benefit paid for by Federal funds. This change was motivated by Congressional concern about welfare fraud and the possibility of aliens not authorized to work in this country doing so.

It could be inferred from the 1972 legislation that the Congress did not intend for SSN's to be issued to illegal aliens or to aliens who are admitted to the United States temporarily but without employment authorization. It was quickly realized, however, that those aliens lawfully admitted, but not authorized to work in this country, could have legitimate need for SSN's for purposes other than work--for example, opening bank accounts, buying stocks, filing IRS tax reports on investment income, obtaining drivers' licenses in some States, etc. To meet this need, SSA agreed to assign SSN's for non-work purposes only to legal aliens, with the understanding that SSA internal records, but not the card itself, would be marked and, if earnings were reported for one of these SSN's, the Immigration and Naturalization Service would be notified that the alien was working in violation of his or her conditions of admittance.

The Tax Reform Act of 1976

The amendments to the Social Security Act contained in the Tax Reform Act of 1976 further enlarged the sphere of authorized SSN use. This Act provided that a State may use the SSN in the administration of "any tax, general public assistance, driver's license, or motor vehicle registration law within its jurisdiction" and it authorized the States to require individuals affected by such laws to furnish their SSN's to the States.

The 1976 amendments also made it a violation of the Social Security Act to misuse the SSN for any purpose. This change was an expansion of the previous provision which generally limited violations for misuse to cases where a person was attempting to improperly obtain Social Security or any federally funded benefits. Finally, the 1976 amendments made it a violation of the Social Security Act to disclose or compel disclosure of the SSN of any person in violation of the law. This provision was added, the legislative history suggests, to make sure that States which were permitted to use the SSN for tax, welfare, driver's license and motor vehicle purposes did not use the SSN for other purposes or disclose it to others.

SSN Issuance and Verification Procedures

Recognizing that using the SSN for other than Social Security purposes brought with it the potential for increased fraud in non-Social Security programs, in 1971 SSA began to tighten up the issuance and verification of SSN's in the following ways:

- By requiring evidence of identity of all first-time applicants aged 55 or older;
- By transferring issuance of original SSN's from the local Social Security District Offices to the Baltimore Headquarters in order to exercise greater control; and
- By computerizing all SSN information from former applicants so that all new requests could be electronically screened to avoid issuing multiple numbers.

The concern of the Congress about the integrity of the SSN was reflected in Social Security legislation in 1972 which required that SSN applicants submit evidence to establish their age, identity, and U.S. citizenship or lawful alien status before being issued numbers. These requirements were initially applied only to applicants age 18 or older and those who were foreign born. However, because these groups comprise less than 20 percent of the population applying for SSN's, in 1978 SSA expanded these requirements to all applicants for SSN's, including those requesting replacement cards. Present regulations contain the following evidentiary requirements:

- Documentary evidence of age, identity, and citizenship or alien status is required of all applicants for SSN's regardless of age. For example, for a new SSN, an applicant must submit at least two forms of acceptable evidence, such as a birth certificate, baptismal record, and Immigration or Naturalization Records;
- A personal interview is conducted with all SSN applicants aged 18 and older who apply for new numbers; and
- State and local agencies which assist SSA by taking applications for SSN's from AFDC recipients must use evidentiary requirements that conform to SSA's requirements.

Because these more stringent documentation requirements were implemented relatively recently, the bulk of SSN records still are based strictly on the numberholder's allegations.

In addition to these evidentiary requirements which applicants for SSN's must satisfy, SSA has developed a number of initiatives to tighten Social Security card and number issuance procedures:

- Training will begin later this year for SSA field employees handling Social Security number applications to enable them to recognize counterfeit and altered immigration documents, birth certificates and other records presented as evidence of age, identity or citizenship or legal alien status;
- A prominent legend such as "Not Valid for Employment" will be added to the face of SSN cards issued for nonwork purposes to legal aliens who do not have work authorization in the U.S beginning early next year;
- National implementation will begin next year of a process which will speed the SSN issuance process by transmitting the application data by wire directly from the local Social Security office to the central processing system.

Problems with "Tamper-Proof" or "Non-Counterfeitable" Cards

There are many practical problems with making the Social Security number and card a more "secure" identifier:

- First, there is no such thing as a non-counterfeitable card. It is possible to make cards which are very difficult and costly to tamper with or counterfeit, but there is no card which can be made absolutely secure if the incentives for counterfeiting are great enough.

- Second, even if an absolutely secure card could be developed, its validity depends upon the validity of documents a person presents to SSA as proofs of facts, such as identity and age, that are needed for issuance of the card. This documentation itself is subject to alteration and counterfeiting. Because the bulk of current cards were issued in earlier years before documentary evidence was required, most current cardholders would have to submit documentation of their identity before any new, secure card could be issued to them.

  I want to mention here that a very popular method of establishing a fraudulent identity takes advantage of the fact that there is no way to match State and local birth and death records. Thus, a person can obtain the birth certificate of a deceased person, and then use the certificate as evidence of identity to get other documents, such as a Social Security number.

- Third, for an employer to use a Social Security card as an identification document, the card should establish that it belongs to the person presenting it. The current card contains only a name, a Social Security number, and a space for the person to sign the card if he or she wishes. Changing the card by adding a photograph and requiring that it be signed when issued are not wholly effective positive identifiers because people can modify their appearance, and signatures can be reproduced with practice. In addition, pictures and signatures on the card would require updating from time to time, because appearances and signatures change considerably over a lifetime. More secure identifiers, such as fingerprints, require verification techniques that are expensive and that employers cannot themselves apply.

Reissuance Problems Associated with Using a "Secure" Social Security Card as a National Identifier

Many suggestions for revising the Social Security card presume that a new, more secure card will be issued prospectively. These proposals call for issuing new "secure" cards to new applicants for Social Security numbers. While there are logistical advantages to a gradual changeover to a new card, as long as there are two types of Social Security cards in existence --the old card and a new, secure card--a "secure" system of identification will not exist for many years. The reason is that employers and other parties of interest will have no way of knowing which type of card a particular individual should have and therefore would have to treat the old, nonsecure cards as legitimate any time a person stated that he or she had not yet been issued the new card.

The fact that a new secure card could not be wholly effective as long as old cards were also in use leads to the consideration of the factors involved in requiring complete reissuance of more secure cards to all cardholders over a limited time period or to people who change jobs. A major issue in such an undertaking would be its costs.

- The process of verifying the identity of 200 million people and issuing them a new card made of bank-note paper, a process which would be compatible with the present SSN issuance system, is estimated to cost $860 million and require 52,000 work years. These cost estimates assume that the new card could be issued using the existing Social Security number issuance system. Reissuance of all existing cards through the current SSN issuance system could be done on either a 5-year or 10-year schedule.

- If new banknote cards were issued when people change jobs, approximately 40 million new cards would be issued in the first year. With stringent evidentiary requirements, the first-year cost of this approach would be about $180 million and would require an additional 11,000 work years. Since any type of new card also should be issued to applicants for original SSN's and duplicate cards, the total first-year cost of phasing in a new type of card would be somewhat higher. With this type of reissuance, it would take at least 5 years before the vast majority of active Social Security cards were converted to the banknote version.

- Reissuing cards which have better identification features, such as photographs, would require a complete revamping of the current card issuance system to include facilities all over the country for taking the photographs, for example, and arranging to place the picture on the card after the application has been processed in the headquarters office. We have not estimated the costs involved with identification features such as photographs.

A second factor to be considered in reissuing the Social Security card is speed of issuance required. If a new "secure" card were required as a precondition to being hired, it is virtually certain that employees and employers would insist upon a system that produced almost instantaneous card issuance. The current system issues about 12 million cards annually and requires an average of about 4 to 6 weeks from application to issuance. Reissuance of a much greater volume of cards on a more rapid basis would require new systems, significantly increase costs, and require several years lead time for implementation.

A third consideration regarding a "secure" card system is that, in addition to the Federal Government's costs, the verification process for issuing the card would have a severe impact on State and local custodians of the records needed to verify age, identity, and citizenship or alien status. There would be a very large number of requests for the evidence in these records which would result in time delays.

Use of the Social Security Card and Number as an Identity Document

In announcing its initiatives on immigration and refugee policy, the Administration expressed its opposition to the creation of a national identity card. The Reagan Administration thus continued the position previous administrations of both parties have taken on this issue. Over the past decade, nevertheless, there have been a variety of proposals to convert the Social Security number and card to a secure universal identifier.

The principal concern about the concept of a universal identifier for U.S. citizens centers around questions of individual privacy. In this age of computers and automated data banks, the creation of a secure identification system, coupled with a common universal identification number, could lead to the combination of information on an individual from various governmental and private data files.

In addition to these privacy concerns, any effort to revise the Social Security card to make it a truly "secure" identification document may ultimately be ineffective because, as I noted earlier, the card can only be as reliable as the documents on which it is based. Thus, we think that the Administration's plan to use two pieces of documentation, rather than to try to create one national identification document, is the most effective approach. We are committed, however, to further improving the integrity of the Social Security number issuance process and will work with the Department of Justice to assure proper use of the Social Security card as part of the employer sanctions program.

Mr. Chairman, that concludes my testimony. I will be glad to answer any questions which you may have.

Senator SIMPSON. We have a very distinguished witness before the subcommittee today, Arthur Flemming, the Chairman of the Commission on Civil Rights. His background is an extraordinary one in public service. He was Secretary of Health, Education, and Welfare from 1958 to 1961; Deputy Chairman of the White House Conference on Aging and U.S. Commissioner on Aging for Health, Education, and Welfare from 1973 through 1978; a Special Consultant to the President on Aging; an educator; and president of the University of Oregon. He has a distinguished public career, not only in government life but in the field of education.

It is a pleasure to have you and we look forward to your testimony.

STATEMENT OF ARTHUR FLEMMING, CHAIRMAN, U.S. COMMISSION ON CIVIL RIGHTS, ACCOMPANIED BY JOHN HOPE III, ACTING STAFF DIRECTOR; PAUL ALEXANDER, ACTING GENERAL COUNSEL; AND DONALD CHOU, STAFF ATTORNEY

Mr. FLEMMING. Mr. Chairman, I appreciate very, very much the opportunity of being here with you. The Commission is very, very pleased to respond to your request to testify.

Accompanying me today is John Hope III, who is our acting staff director; Paul Alexander, our acting general counsel, and Donald Chou, a staff attorney.

The U.S. Commission on Civil Rights examined the proposal being considered by this committee, along with other suggested remedies for dealing with the undocumented worker problem in its national immigration report entitled, "The Tarnished Golden Door: Civil Rights Issues in Immigration," which was submitted to the Congress and the President in September 1980.

The Commission in its report recognized the seriousness of the overall problem which this committee is considering. Our Commission was unanimous in recommending that the following steps be taken:

First, the Commission recommends the vigorous enforcement of the Fair Labor Standards Act and other laws to insure that neither citizens nor aliens are required to work under unfair working conditions and to minimize job displacement.

The Commission believes that this recommendation, by reducing the attractiveness for an employer of choosing an undocumented worker, would help to lower the participation of undocumented workers in the domestic labor market.

Second, the Commission recommends the strengthening of the program of the Immigration and Naturalization Service by authorizing the hiring of additional personnel and through the use of more modern law enforcement technology, such as computerized arrival-departure records.

In the immigration law enforcement area, we also recommend the creation of a Border Management Agency within the Department of the Treasury to separate the two conflicting missions of the Immigration and Naturalization Service—service and enforcement—in the belief that such action will result in focusing additional time and resources on each of those missions.

Third, we recommend vigorous efforts on the part of our Government designed to bring into existence bilateral or multilateral agreements or compacts with the major source countries for undocumented workers in order to reduce and regulate the population flow between those countries and the United States. In making that recommendation, we said in our report that:

There are precedents for the development of working agreements to deal with the population flow between the United States and the major source countries for undocumented workers. It is recognized that the negotiation of such agreements must be linked with other outstanding issues, the resolution of which would be to the advantage of all parties. Also programs of economic cooperation and development can be worked out in such a way that they further develop the resources required to reduce the need for citizens in source countries to seek work in the United States.

The Commission strongly supports the implementation of this three-pronged approach to reducing the participation of undocumented workers in the domestic labor market. We believe that these recommendations if implemented will move the nation forward in dealing with the undocumented worker issue without jeopardizing our civil liberties.

Another proposed solution to the undocumented worker issue is the enactment of employer sanctions legislation.

Two members of the U.S. Commission on Civil Rights recommended that employer sanctions legislation be enacted, provided that such legislation is coupled with some compulsory national identification system for the verification of the employment eligibility of current and/or prospective employees.

Commissioner Stephen Horn supported an employer sanctions law if it were accompanied by the creation of a secure and counterfeit-proof social security card which could be used by employers to prevent the inadvertent employment of undocumented aliens. In his opinion, such an identification document would help alleviate distressing working conditions of the low-skill, low-wage industry which employs undocumented workers and the resultant denial of job experiences for our own citizens.

Commissioner Frankie M. Freeman, who resigned as a member of the Commission just prior to the release of the report, following 16 years of distinguished service, maintained that it should be made more difficult for persons entering illegally to secure employment by developing an indentification system which will minimize or effectively prevent employment discrimination against persons legally here.

A majority of the Commission, however, rejected employer sanctions either with or without a national identity card or other compulsory identification system. The majority specifically rejected the adoption of an employer sanction law for the following reasons:

First, the Commission believes such a law would impose law enforcement duties upon private persons and corporations, with undesirable consequences not only for the employer but for job applicants.

Although employers have existing responsibilities under such Federal statutes as the Fair Labor Standards Act, income tax laws, and title VII, and employer sanctions law would be unique in that its purpose is not merely to regulate the conduct of the employer, but to regulate the prior nonemployment-related conduct of the prospective employee.

Second, such a law would increase employment discrimination against U.S. citizens and legal permanent resident aliens who are racially or culturally identifiable with major immigrant groups.

Because of the great potential for employment discrimination under an employer sanctions law, some of its proponents have suggested the adoption of a compulsory national identity card, work permit, or other universal identifier.

The majority of the Commission after weighing the pros and cons of this proposal concluded that it raises serious questions about the undermining of civil liberties.

The Commission does not believe that, serious as the adverse impact of the undocumented workers may be on the employment opportunities of some citizens and legal aliens, the nation is warranted in traveling a path which could result in depriving all citizens of civil liberties. The Commission does not believe that the ends that would be achieved justify the proposed means.

The reason for our arriving at this conclusion can be briefly described as follows:

First, the availability of a compulsory national identity card, work permit, or other standard universal identifier would provide the means for a serious invasion of privacy.

The Nation's concern over the individual costs such a compulsory identification document would exact through the invasion of privacy and the resulting effect this invasion could have on the erosion of other rights, such as the freedom of speech, assembly, and association, was evidenced by the passage of the Privacy Act of 1974. In reporting this legislation to the Senate, the Government Operations Committee said its purpose was to curb the illegal, unwise, overbroad investigation and record surveillance of law-abiding citizens produced in recent year from actions of some overzealous investigators, and the curiosity of some Government administrators, or the wrongful disclosure and use, in some cases, of personal files held by Federal agencies.

The existence of a national identity card would multiply by many times the opportunities for bringing together in one file information which could constitute a serious invasion of privacy. The increasing governmental and nongovernmental use of the social security card number for this purpose should put us on notice as to what could be done with a compulsory national identity card.

Second, compulsory national identity cards, work permits, or other standard universal identifiers would also provide the Government with an opportunity to undermine individual rights by confiscating, or by threatening the confiscation of the card in an arbitrary and capricious manner.

In brief, the majority of the Commission concluded that the Nation would not be justified in traveling the untried paths of employer sanction and a national identity card knowing that in so doing it would be jeopardizing seriously equal employment opportunity programs and the civil liberties of all our people.

Thank you very much, Mr. Chairman.

Senator **Simpson**. Thank you very much. I very much appreciate your testimony, Mr. Flemming.

You indicate, and very rightly so, some very serious civil liberties concerns about a new system to verify authorizaton for work in the United States. Those concerns are based in the issues of privacy and the possibility of Government abuse.

It would be very helpful to this subcommittee if you could be a bit more specific. Could you provide us some examples of problems which might exist under various systems?

One of the interesting, and yet most perplexing, parts of the past as we pursue this in the Subcommittee on Immigration and Refugee policy is the views of people who feel as strongly as you do, and rightly so—and I feel strongly too—that we must assuredly do our work in a way which protects the civil liberties which we cherish so.

I always say to them, "OK, if you cannot see your way to embrace the three aspects of it—increased enforcement at our borders and internally, some kind of employer sanctions program, and some type of verifier or identifier system—please furnish an alternative, but please, no fair quoting from the Statue of Liberty." That is where the argument often goes. It launches into things that are really, in my mind, diversionary from the issue of what are we going to do about a system that is overwhelmed and gimmicked? That is what is happening to this country. That, I think, is without question.

Now, of course, the action switches from the administrative arena and the white paper arena, and the theory arena to a very rambunctious arena, and that is Congress. Our constituents do not write white papers, they write and say, "What are you boobs going to do about this problem?"

I would be very interested, therefore, in specifics that you could share with us.

Mr. **Flemming**. Mr. Chairman, I appreciate your invitation to do that. And may I say, this is an issue I have been associated with in a rather interesting way over a long span of years.

First of all on the undocumented worker issue, or the issue of our drawing to a certain degree on human resources from other countries. During World War II, I was a member of the Civil Service Commission, but also a member of the War Manpower Commission, and Chairman of the Labor-Management Committee of the War Manpower Commission. So, I was very much aware of the agreement that our Government entered into with the Mexican Government during that particular period.

As you will note from my opening statement, we do also have a 3-point program, one of which of course is providing additional resources for more effective work on the part of the Immigration and Naturalization Service.

Likewise we feel that we could, as a nation, enforce far more vigorously than we have the Fair Labor Standards Act, and if that were enforced rigorously that would lessen to some degree the incentive for the employment of undocumented workers.

Then, finally, you will note that we did put a good deal of emphasis on the desirability of the State Department, our Government, pursuing vigorously the possibility of agreements between our Government and other countries.

Now, coming back to the universal identification card and other terms that are used. Here again, in 1947 when I was a member of the Civil Service Commission, President Roosevelt signed an Executive order directing that all Federal employees be assigned a social security number. He specified that the cost of doing that was to be taken out of the Civil Service Commission appropriation.

Therefore, it was incumbent upon us to come to the Congress and ask for money to support that Executive order. I was handling the Commission's appropriation at that time, and one of the most vigorous discussions I have ever had on the hill took place with the late Senator McKeller, the chairman of the Appropriations Committee. To say that there was no sentiment for carrying out that Executive order would be to put it very mildly.

They put a rider on it, the early appropriation riders saying that we were not to spend any money for that particular purpose. That rider stayed on the Civil Service Commission appropriation bill down to 1961 at least.

When I was Secretary of HEW, the issue of further use of the social security number came up quite a number of times, both in the Government and outside of the Government. Personally I took a position of vigorous opposition to the use of the social security number because I saw that as a threat, it seemed to me, to our basic civil liberty.

But as you know, in 1961 the executive branch decided to authorize its use in connection with the filing of income tax returns, and that represented a complete breakdown in terms of resisting the use of the social security number because after that quite a number of Government agencies began to use it, and quite a number of other people outside of Government began to use it.

Now, coming to your specific question. I would say that our Commission debated this long and vigorously. Well, that is clear, we had a divided Commission on that, as I indicated in my testimony. But we as individual members gave it a great deal of time and thought. We regarded it as a very basic and a very fundamental issue, and an issue on which you just could not afford to be dogmatic or just indulge in generalization.

We have a section of our report where we do elaborate to a considerable degree on our reasons for arriving at the conclusion that we arrived at on the identification card.

Right at the beginning, or near the beginning of that we said this: "The concerns over expanded usage of the social security card led the Congress to enact legislation curbing that abuse."

During the Senate floor debates on that provision of the Privacy Act of 1974, Senator Charles H. Percy noted the problems that had been created by the use of the social security card beyond its intended purpose. He said:

> If you look at your own Social Security card, at the bottom it reads, "for Social Security and tax purposes, not for identification."
>
> The social security number was clearly not intended by its creators to become the universal identifier. But in the race to computerize every known fact stored by the Government about its citizens the warning on our cards has been ignored. It is not so much that the social security number had to be used by the computer programers and data collectors, it was there and it was convenient.
>
> Apparently no one gave thought, 15 or 20 years ago, to the possibility that massive computerization of personal data files on the basis of a single, unprotected number could some day pose a problem. That lack of foresight was unfortunate for now hundreds of Government computer systems and thousands of private computer systems use the social security number in the indexing and identification of individuals.
>
> The possibility is growing that anyone with access to the proper computer terminal could type in a social security number and thereby order the computer to print out details concerning what cars we own, what our driving record is like, how we spend our money and how we pay our bills; how we did in school; what we tell our doctor, and what he tells us in return.

That is the end of the quote from Senator Percy. We said:

> The establishment of a compulsory nationwide system of identification could mean the imposition of another substantial Government program of data collection and information gathering on individual Americans.

Senator SIMPSON. I do understand that. I just want to get back to the specifics because we are talking about doing something with regard to an identifier or verification system.

Mr. FLEMMING. Right.

Senator SIMPSON. A new verification does not require the broadening of any existing data-gathering system. In fact, we are all suggesting that it actually be much limited compared to any existing system.

My question then: To get more specific, I want to understand your fears—I am going to call them "fears" because they sound like fears, they do not sound like concerns and there is a difference—fears of a system which is attempting to verify only that a named person is authorized to work in the United States of America, which might be if we come to a card. I am talking, for example, about a card which says, "I am authorized to work in the United States of America," with a number on it. You telephone for confirmation of the number, and the only data the employer presents for verification of the applicant's identity is the maiden name of that person's mother and the birth date.

How do those two significant facts, two significant pieces of data, intrude upon a person's civil rights or liberties?

Mr. FLEMMING. Mr. Chairman, I appreciate the fact that undoubtedly in drafting legislation to implement the use of a universal identifier in connection with this particular problem, that the language of that particular bill would be restrictive and would indicate that it was to be used for a specific purpose and not for anything else.

But having lived through the experience with the social security number, I do not have faith in the fact that this Government would stay with that for an indefinite period of time. That was the idea back of the social security number that it would be used only, originally, for the purpose of administering the social security system. Look what has happened to it over a period of years.

It is a threat. It is not just fears that we are talking about, right now, as it stands now, it is a real threat to our privacy as citizens. The Congress recognized that when it passed the Privacy Act, and tried to put some limitation around the additional and further use of the social security card. But a lot of water was already over the dam when the Congress in 1974 moved in on it.

I guess you are correct in identifying this as a fear, but it is also a concern on my part that on the basis of past experience that you introduce into our way of life an official Government universal identify care for a particular purpose. It will not be too long before the safeguards that are a part of that law will be offset by additional legislation or by an administrator in the executive branch deciding that in the discharge of his duties as an administrator he has a right to utilize this particular instrument in a particular way.

You and I know how this grows and develops within the governmental system. I think it does go beyond the realm of fears because we have here an experience that extends over a period of 45 years with something very, very comparable to what we are talking about now.

Senator Simpson. You and I both know something about the system, but we both know something about Congress, too—how they react to their constituents who feel aggrieved and pried upon, and probed, and investigated, and asked to do things which are onerous to them as citizens. That is why I do not believe that is going to occur. That is my view.

More importantly, at no time have we ever discussed any kind of identifier which would require that it be carried upon the person at all times. That has never been part of this. The only time this document—if we come to a document and I am not certain that we will, but if we do—the only time this document would be presented would be in a new-hire situation, period. That is all. That is it.

Some type of identifier system is used by most every civilized country in the world—some type of system.

Let me ask you this: You mentioned that the Commission's opposition to enforce sanctions based on an identifier system rests in the long run on the civil rights of citizens, that those will be jeopardized.

Let me share with you—you might refer to it as a "fear" but I would call it a concern—and I think the members of the subcommittee and the full committee share basically the philosophy but I would not put that to the test; they can all speak and do beautifully for themselves in that area.

I have the concern that if illegal immigration continues unabated and unchecked in this land, that the democratic foundations and institutions which you deeply desire to protect will be seriously undermined and diminished in ways known and unknown, by the presence of a large group of human beings who are second-class citizens in every respect; who are deprived of many, many rights that you cherish and I cherish, under our system of laws; who are indeed fearful of claiming those rights to which they are entitled, such as labor rights; whose children cannot be educated; who are afraid to seek medical care and have gone underground.

To me, those are more serious considerations in every respect than those of yours. Would you comment on the very real danger that faces our Nation in that continuation?

Mr. **Flemming**. Mr. Chairman, I share your concern, fear, that you have stated and I think very, very effectively. I think we have had a manifestation of that in the action on the part of the Texas State Legislature in seeking to deny to the children of undocumented workers the right to attend public schools.

I happened to have the opportunity of talking with one of the judges who handed down one of the decisions in the U.S. District Court, after he had handed it down. He was telling me about the impact that the record that was developed in his court had on him. He said, "I began to realize that what people were talking about was the development of a sub-class of uneducated persons who could be victimized and treated in virtually the same way as slaves were treated."

I think it is a very serious problem. Now, again, we feel that there are approaches to dealing with the problem that can be taken and should be taken without jeopardizing our basic liberties.

First of all, we examined very carefully the operation of the Immigration and Naturalization Service. We have a good many recommendations in here relevant to the operation of that service. It is clear that this nation has not made anything resembling a reasonable investment in the resources of the Immigration and Naturalization Service. We even have a reorganization recommendation here which we think is worth some consideration. That is the setting up of a Border Enforcement Agency in Treasury, and so on.

But anyhow, that is an area that clearly has not been explored to the extent that it should be explored.

In the second place, I think that most people would agree on the fact that we have done a very poor job as a government in the enforcement of the Fair Labor Standards law and allied, similar laws that fall within that particular category.

We have not even tried that, to see whether or not that would act as a deterrent in terms of employers say, "Well, if I am going to be held to these kinds of standards, then I will lose interest in the employment of illegal aliens." We just have not tried that at all.

Again, I really believe that we do have to recognize, for example, that off and on we have treated Mexico, or portions of Mexico, as a part of our labor market in this country. I know we have during World War II; to a certain extent during Korea, and so on. We have kind of acted as though we could turn the faucet on, shut it off at will.

Now, why do we not sit down and put this on our agenda for negotiations with the Mexican Government, along with many other items that I know, you know, are on the agenda for negotiation with the Mexican Government, and see if we cannot develop an agreement whereby because of the mutual concerns and interests we can reach an understanding on a system that will improve the picture?

In other words, I am afraid that because we are getting frustrated over the present situation—and I can understand why we are getting frustrated because I agree with you as to the seriousness of the situation. We may be looking for a shortcut, a shortcut that no one has been able to demonstrate will prove to be effective, but a shortcut that if we take it could jeopardize some of our basic liberties.

I feel that is too great a price to pay for the solution of the problem when there are other possible solutions confronting us that we have not, as a government, pursued vigorously.

Senator SIMPSON. I hear that, and this subcommittee will not be involved in shortcut systems of that nature. That is the reason we are having the extensive hearings we are. I do hear you, and I think that you are hearing what I am addressing.

Very few witnesses in the hearings to date have said that enforcement of existing law would answer the question, would solve the problem. That is interesting, and that comes from labor groups, those representing blacks and minorities. The Hispanic community feels that the enforcement of existing law might be adequate. But the enforcement of our laws, especially our labor laws, depends upon a grievance filed by a worker. An illegal worker is not going to file a grievance. Those are some of the things.

Mr. FLEMMING. I think you put your finger on an important point, Mr. Chairman. But in terms of the enforcement of the Fair Labor Standards Act, for example, I am sure you can initiate an enforcement action through the filing of a grievance by the workman. But it is also possible for the enforcement agency to go in and make an inspection of what is going on, what kind of personnel policies they are following, how they are implementing those policies, and so on.

The enforcement agency can initiate some enforcement activity without waiting for an individual grievance. I am sure you understand that I did put emphasis on providing Immigration and Naturalization with more resources for carrying out the duties and responsibilities that the Congress has placed on them.

But then, in addition to that, I do feel that we have not taken seriously—as seriously as we should—the implementation and enforcement of the law. I notice that your colleague, Senator Kennedy, in his opening statement also put emphasis there. I, as one who has been in the Government for a long period of time, I really think that is a positive kind of an approach, and an approach that would produce some results. At least I would like to see it tried.

Senator SIMPSON. That will be part of the discussion. Really, I would be interested in sharing sometime with you your observations about your visit with that judge who was involved in that decision; that would be most fascinating to me. You talked about his very deep concern that we would end up, head into what is called slavery with those persons.

And yet, on the other side of that, we find in our testimony that many of the illegal aliens are receiving more than the minimum wage and therefore setting off the real struggle of those less fortunate of our citizens who then say, "Stop."

So, it is an interesting business. It is like that toy my children had when they were little. You hit the peg here, and then it would pop up over here. Then you hit that one, and it pops up somewhere else. That is what this game is all about. Every time we knock one down, it comes up over here. It has been that way in the 3 years that I have been involved in it.

Mr. **Flemming**. Mr. Chairman, there is no issue that I have confronted in my experience in the Government where the kind of dialog that you and members of the committee are encouraging is more important than in connection with this particular issue. I can assure you that I will be more than happy not just here, but in the future, to engage in dialog on it because the country is confronted with a very serious problem.

I appreciate the fact that reasonable people differ as to the best solution. We are only going to get that best solution if we can carry on the kind of dialog that you are encouraging, and I appreciate it.

Senator **Simpson**. I am going to commend you to a very delightful fate, I am going to see that you and Ted Hesburgh get together, two great civil libertarians with opposite views of this particular situation. [Laughter.]

You will enjoy it.

Mr. **Flemming**. As you know, we have been together. I can assure you on it. May I say that many, many aspects of the report of his commission I am in complete agreement with, and I participated in a followup meeting out at the Johnson Conference Center in Racine, Wis. I am prepared to support many of the recommendations in that particular report.

Obviously, I am not prepared to support that idea. Of course, we have a divided commission on that particular issue, he had a divided commission, also.

Senator **Simpson**. I am sure he did.

Mr. **Flemming**. So, that illustrates it.

Senator **Simpson**. Thank you very much, Mr. Flemming, I very much appreciate your being here.

Mr. **Flemming**. It was a pleasure to be here with you. Thank you.

Senator **Simpson**. The next panel will be the business panel, Mr. Bernard Brown, the National Coalition of Apparel Industries Education Committee; Mr. Perry Ellsworth, National Council of Agricultural Employers; Mr. Robert Neville, National Restaurant Association. Take a moment or two to settle in, if you will.

The hearing will come to order, please, and we will proceed with the business panel. First, Mr. Brown please, if you will.

STATEMENT OF BERNARD Z. BROWN, COCHAIRMAN, NATIONAL COALITION OF APPAREL INDUSTRIES EDUCATION COMMITTEE

Mr. **Brown**. My name is Bernard Z. Brown, I am cochairman of the National Coalition of Apparel Industries Educational Committee and legislative chairman of the Coalition of Apparel Industries in California.

I am appearing before you here today on behalf of these organizations at the subcommittee's request to provide the position of the apparel manufacturing industry with regard to the problem of verification of immigration status of garment industry workers.

As this subcommittee is aware, the garment industry in the United States employs a large number of immigrant workers, particularly from the Spanish-speaking countries and also from the Far East.

We value the dedication and productivity of these workers and we are concerned that any verification system adopted by the Federal Government not place unreasonable burdens upon them. We also employ large numbers of native-born Mexican-Americans and Oriental-American workers, and we are particularly concerned that any system adopted be ethnically neutral and not require employers to ask more of their Mexican-American workers, for example, than they ask of any other workers.

In short, if identification is to be required it should be required of all applicants for employment, or none.

With regard to the documents the administration has proposed to prove the employment eligibility of workers, namely, a permanent resident alien card or temporary worker visa, or birth certificate, a driver's license, a social security card or draft card, we believe all such documents are easily counterfeitable and offer little reliability.

Although we understand that there has been some resistance to a more extensive use of the social security system type of identification, we know of no other method that is likely to be both efficient and neutral. Consequently, it would be our recommendation that any system used to determine the eligibility of workers be one like social security which has the broadest possible application to our work force.

I was going to stop there, but I asked if I might go a little bit farther and give you our position on some of the five points. Is that all right?

Senator SIMPSON. Certainly.

Mr. BROWN. On some of the five points proposed. I am not going to go through all of them because I know there is very limited time here.

The Government proposed to increase enforcement. Part of this was border control. Our association agrees with that, that is fine, whatever they can do along those lines.

With regard to increasing enforcement measures at locations other than border areas we ask that surveys as they are today, be eliminated—surveys or sweeps as they are also known.

That no John Doe warrants be issued, but that any employee that is suspected of illegal entry be called into a separate office at the plant site, rather than on the factory floor for interrogation by the INS agent.

What has happened to us in the past in these sweeps, if there is one person in a plant that the INS are looking for, they conduct a sweep, it terrifies our workers, it disrupts our work, and sometimes almost puts us out of business.

A second proposal—the administration proposed, that employers of four or more employees "knowingly" hire come under the law.

Our position there is that we feel that all employers who knowingly hire illegal aliens—be it one, two, or three, regardless of the number—should come under the same law.

Also, on the fines. We feel that the fines themselves for the first offense, are a little bit high. We would like to see fines of $250 for the first $500 the second; and $1,000 for the third.

Am I getting close to my time limit? I see it changed.

Senator SIMPSON. Yes, it goes red eventually. You are not there yet.

Mr. BROWN. Not there, all right, I will keep going.

The administration proposes to have an additional 50,000 workers be admitted annually. We say that they should be qualified workers only to be admitted on a "need to have" basis, and not have people coming here that have no job skills and there are no jobs for them.

We feel very strongly about another part, that no employer or employee should be taxed for social security benefits, unemployment insurance, or any other contribution and then be denied the benefits for which his taxes and contributions were made. That is probably one of our strongest points of all.

We also feel that the spouses and children should be on a priority basis to be allowed to come to this country once these people do gain a status. I see my time is up, so I will leave off there.

Senator SIMPSON. Fine. We will appreciate your furnishing those views that are expressed there on all of the issues before us. You have certainly touched upon all of them in the area of employee worker program and amnesty. We will be looking forward to hearing the testimony as we proceed in these various areas.

Mr. Ellsworth, please. It is nice to see you again, sir.

STATEMENT OF PERRY ELLSWORTH, EXECUTIVE VICE PRESIDENT, NATIONAL COUNCIL OF AGRICULTURAL EMPLOYERS

Mr. ELLSWORTH. Thank you, sir; it is good to be back.

We will turn now to the matter of identification of a legal worker. My association, which is the National Council of Agricultural Employers, believes that if legislation is enacted which would prohibit employers from knowingly hiring a worker who is not authorized employment in this country then, as everybody else has said that has been before you, Senator, we have to have some method of identifying the legal worker.

At the risk of always being accused of claiming that agriculture is different, let me say again that even in this instance it is different.

First, workers are hired and put to work almost simultaneously. There is rarely, if ever, a job application form to be filled out. It is even more rare for a farmer to tell a worker, "We will get in touch with you."

Furthermore, except for the beginning of the season, there is no such thing, as far as seasonal farm labor is concerned, as two weeks notice that a worker is going to leave.

Second, while agricultural employers keep records required by law, they seldom if ever have a personnel office, and I think it is perfectly safe to say that more workers are hired at the edge of the field, work in a field or orchard, and are paid at the edge of the field or orchard, than ever see what we might call a pay window or anything similar to it.

The Labor Department today was asked by you, sir, about the documentation requirements of the Farm Labor Conractor Registration Act, and my statement—which I trust will be made part of the record—lists those documents completely.

Senator SIMPSON. Without objection.

Mr. ELLSWORTH. All I can say about those documents is that when you get down to it, a farm labor contractor has to be an expert on the knowledge of documents. Even the farm labor contractor is in desperate need of a speedy, simple identification system of some sort.

The documents that the administration's proposal lists have already been questioned to some extent, aside from the documentation issued by the INS. Now, let me talk about the other four documents which are birth certificate, driver's license, social security card, or a registration certificate issued by the Selective Service System.

In agriculture, when the Farm Labor Contractor Registration Act started, some contractors in Florida tried to get birth certificates for their crews down there. It was found that approximately 40 percent of the workers over 50 years of age could not produce a birth certificate. The courthouse had burned down, records were lost some way or another. So, they had to turn to other documentation.

Second, there are a number of people among farm workers who do not have driver's licenses and do not drive vehicles. Frequently the father of the family may have a driver's license, but that does not mean necessarily that his wife or his daughter has a driver's license—and I am not picking on the females versus the males, but just reporting what I have heard.

The social security card we have already beaten to death as far as its inadequacies are concerned, but at least it is there.

The registration certificate issued by the Selective Service System does not apply to females, and there was a period of several years' hiatus when males did not have to register for Selective Service. So, that really leaves us back with an INS document and a birth certificate as being the only two, or perhaps only the social security card. It will be very difficult for some U.S. citizens to come up with that documentation.

We suggest two others, one of which is the self-certification document that the Labor Department talked about, plus possibly a voter registration card.

Now, we think that all of these documents should be stopgap. We still hold, at the moment at least, with a noncounterfeitable social security card—in spite of all the arguments that are presented against it.

I have been learning more and more about a data bank into which numbers could be put, where one could use an 800 number to call in by phone, all automated. I am not familiar enough with it to make any recommendations at this time. So, I will stop right there and will answer anything else in questions.

Senator SIMPSON. Thank you very much, Mr. Ellsworth.

[The prepared statement of the National Council of Agricultural Employers follows:]

STATEMENT
of the
NATIONAL COUNCIL OF AGRICULTURAL EMPLOYERS
before the
SUBCOMMITTEE ON IMMIGRATION AND REFUGEE POLICY
SENATE COMMITTEE ON THE JUDICIARY
October 2, 1981

Mr. Chairman, my name is Perry R. Ellsworth. I am Executive Vice President of the National Council of Agricultural Employers. NCAE, a voluntary membership association of agricultural employers across the country, is pleased to have this opportunity to make known its views regarding the President's program to combat the rising tide of illegal aliens in this country, with special emphasis on employee identification.

As I stated in my appearance before this Subcommittee on September 30, NCAE's position and views are in response to the President's general proposal, the details of which have not been spelled out in proposed legislation. Our views are based on that proposal, but may change, at such time as hearings are held on a specific bill or bills.

If legislation is enacted which prohibits employers from knowingly hiring a worker not authorized employment in this country, there must be developed and adopted a method whereby an agricultural employer can speedily and accurately ascertain whether a worker is authorized to work in this country before that worker is hired.

At the risk of being accused of always claiming that agriculture is different, let me say, once again, that agriculture is different. First, workers are hired and put to work almost simultaneously. There is rarely, if ever, a job application form to be filled out. It is even more rare for a farmer to tell a worker, "We'll get in touch with you."

Secondly, while agricultural employers keep records required by law, they seldom if ever have a personnel office. It is probably safe to say that more workers are hired at the edge of a field, orchard or grove and are paid at the same place, than are paid at a "pay window" of any kind.

Perhaps a brief review of the Farm Labor Contractor Registration Act, which prohibits a registered farm labor contractor from knowingly hiring an illegal alien would shed a bit of light on this subject.

The U.S. Labor Department's regulation 29 CFR Part 40 contains the following in Section 40.51(p)

> (p) A farm labor contractor shall refrain from recruiting, employing or utilizing with knowledge the services of any person who is an alien not lawfully admitted for permanent residence or who has not been authorized by the Attorney General to accept employment, and must evidence an affirmative showing of a bona fide inquiry of each prospective employee's status as a United States citizen or as a person lawfully authorized to work in the United States. Such affirmative showing will be deemed to be met by written documentation that reliance in good faith was based on any of the following:
>
> (1) Acceptable evidence of United States citizenship—
>
> (i) Birth certificate.
>
> (ii) Certificate of citizenship.
>
> (iii) Certificate of naturalization.
>
> (iv) U. S. identification card (INS Form I-179 or I-197).
>
> (v) Passport issued by United States identifying person as citizen of United States.
>
> (vi) Consular report of birth (State Department Form FL-240).

(vii) Baptismal certificate under seal of a church or other religious body which practices infant baptism showing the individual's date and place of birth within the United States, its territories or possessions.

(viii) A document under seal of a religious body which does not practice infant baptism showing the individual's date and place of birth within the United States, its territories or possessions.

(ix) Tribal enrollment card in an American Indian tribe recognized by the Bureau of Indian Affairs.

(x) Other written advice from The Immigration and Naturalization Service attesting that such person is a citizen of the United States.

(xi) A copy of a declaration, signed by the applicant, under penalty of prosecution for violation of Title 18 U.S.C. § 1001, and witnessed by the signature of the appropriate official of the Employment Service, affixed in the presence of the applicant, filed with the United States Employment Service or any of its affiliated offices attesting that such person is a citizen of the United States, was born at the place stated and on the date set forth thereon, and reciting the following additional information:

(A) Social Security number such (voluntary) and,

(B) Names and addresses of three adult citizens of the United States who can be contacted to verify declarant's citizenship.

(xii) A certificate issued by the Department of Labor, Bureau of Employment Security, Commonwealth of Puerto Rico which attests that, based upon examination of any of the documents prescribed by paragraphs (i) through (xi) above, the individual named and identified by the picture on that certificate was born within the United States (including its territories and possessions) at the place and on the date specified thereon and which sets forth such individual's home address (street and number, city, State, zip code) and Social Security number.

(2) INS—Form I-151 or I-551, Alien Registration Receipt Card (green card), which is proof that the alien has been lawfully admitted to the United States for permanent residence and may accept any employment in this country without restriction. It is a green or blue-green wallet-sized laminated card, bearing a photograph of the alien and contains information concerning his alien registration number, date of admission as an immigrant, birth date and sex.

(3) INS—Form I-94 (with or without a passport)—

(i) INS—Form I-94 bearing an employment authorization consisting of the words "Employment Authorized."

(ii) INS—Form I-94 bearing the designation of H-2, as endorsed on the front or back of the form, authorizing a person to engage only in agricultural employment during the period of such person's authorized stay in the United States.

(4) Any other written advice from the Immigration and Naturalization Service (INS) that such person is an alien authorized by INS to accept such employment in agriculture in the United States.

(5) United States Armed Forces Discharge Papers.

It does not take long to realize that a farm labor contractor has to be an expert on more documents than he ever realized existed!

One side observation is worthy of note. When the Labor Department cracked down on farm labor contractors in Florida, it was soon discovered that approximately 40% of the workers over 50 years of age did not have and could not produce a birth certificate. Court houses have a habit of burning over the years, and records can become lost for other reasons.

The President's proposal, as described by the Attorney General, states that the Administration is explicitly opposed to the creation of a national identity card. It sets forth the following documents which would provide an employer with a good faith defense against a charge of knowingly hiring an illegal alien:

a. Documentation issued by the Immigration and Naturalization Service,

or any two of the following:

b. Birth certificate.

c. Driver's license.

d. Social Security card.

e. Registration certificate issued by the Selective Service System.

The Attorney General's statement then calls for a form, to be signed by both the newly hired employee and the employer, listing which of the above documents the employer had seen. "The form stating the citizen or alien status of the individual and the documentation presented would be retained by the employer and be available for inspection by INS and Labor Department compliance officers," the statement says. NCAE interprets this to mean that the documentation presented would be listed on the form and that an employer would not be required to have photocopies to accompany the form. On the other hand, the only sure proof that an employer will have that he did, indeed, examine the listed documentation is a photocopy thereof. Many agricultural employers do not have photocopiers, and in any event they would not be available for hiring at field, orchard or grove. Furthermore, photocopying INS documents is prohibited.

Turning to the four non-INS documents listed, there will be instances where U.S. citizens might be hard-pressed to produce two. Not every worker has a driver's license. Females have not had to register for Selective Service, and there was a multi-year hiatus in the requirement for males. Under such circumstances, a worker without a birth certificate could not meet the documentation test. NCAE suggests adding two documents to the list: A voter registration card, and the declaration described in 29 CFR Part 40.51 (p)(xi) above.

NCAE believes that all of the above documents should be considered as stop-gap evidence until a non-counterfeitable Social Security card is developed and issued. Given sufficient money, and the sum need not be large, there is not a single listed document that can not be purchased on the "black market." While employers would not be held accountable for the authenticity of a document or documents presented by a worker, no employer wants the Border Patrol to check his workers and apprehend them at the very time they are needed most.

The suggestion has been made that another system of checking workers would be to call an 800 number at the INS or other Federal agency. This would fail based on sheer numbers. An agricultural employer hiring 90 workers one day and 100 workers the next could not possibly place the needed calls in sufficient time to make certain the workers were legal before they were hired and had started working.

Mr. Chairman, the NCAE, speaking for its members and for agricultural employers is opposed, in principle, to having its members converted into law enforcement officers. If, however, that should come to pass, then it is essential that any legislation enacted takes into account the following facts which make agricultural employment different from non-agricultural employment:

1. Workers are, as a general rule, hired on a seasonal basis. There is a sudden need for large numbers of workers one day where there may have been no need (or very little need) the previous day.
2. By comparison with non-agricultural employers, agricultural employers will experience a quite high rate of turnover during a short harvest season. Some workers will work one or two days, then quit. Many agricultural employers hire, during harvest, two to three persons to fill each harvest worker vacancy.
3. Large numbers of agricultural employers do not have equipped, staffed offices. Much, if not all record keeping is performed by an employer and his wife during the evenings.
4. Agricultural employers who utilize day-haul workers may have a completely different lot of workers from one day to the next.

Agricultural employers are not asking for special treatment or exemptions. They are asking, however, that any system adopted for identifying legal workers be designed so that it will be practical and efficient where agricultural employment is concerned.

NCAE stands ready to assist this Subcommittee in any way that it can.

Senator **Simpson**. Mr. Neville, please?

STATEMENT OF ROBERT NEVILLE, GENERAL COUNSEL, NATIONAL RESTAURANT ASSOCIATION

Mr. **Neville**. Thank you, Mr. Chairman. I assume that my full statement will appear in the record, I will just summarize it.

Senator **Simpson**. Please. Your statement will be received into the record without objection.

Mr. **Neville**. Mr. Chairman, I would like to make clear at the outset that the members of my organization feel very strongly that the enforcement of existing laws that prohibit aliens from working and preventing illegal entry in the first place, is primarily a Government responsibility. It is not only a Government responsibility, but we feel it is something that has to be uppermost in your mind when you determine that employers have a role to play.

The reason I say that was illustrated this morning in earlier testimony by the head of INS. If you recall, she was describing how employer enforcement would work. When she talked about the employers' responsibilities——

Senator **Simpson**. Can we do something about that noise? It is very disconcerting.

Mr. **Neville**. If I move away from it, would that help?

Senator **Simpson**. I do not think it is the microphone system, it is from some of the electronic equipment here. You might pull that microphone a bit closer to you, Mr. Neville, and maybe then you will overcome the electronic racket.

Mr. **Neville**. The point that I wish to make in emphasizing this Government responsibility was really made by the acting head of INS in her testimony this morning. You asked if the employer's responsibility could not be confined to the viewing of these cards, or whatever identification is resolved upon or decided upon; the viewing of those and recording the fact that they had been viewed.

Well, she immediately went to the fact that some types of identification, or some things that you may settle on as reasonable identification, can be easily forged. She talked about a birth certificate with white markings through it and said the employer should reject such identification. Immediately, when you turn these things over to Government and Government officials, the employer's responsibility becomes a lot greater than you anticipate it will become.

The point I would like to make to you today is that this is really Government's responsibility, and when they ask private citizens to step into it, whatever you tell them to do has got to be clear, simple, and direct; and they have got to be assured that when they perform whatever functions you require them to perform because you feel it is essential to solve this problem, they have got to feel that they will not run afoul of the Government. They will not be violating the law.

Now, I drew from the acting head of INS's testimony that they are looking down the road to the point where the employer will be directly involved in the responsibility for determining whether documents are authentic, and I do not think that is a proper role for a private citizen.

The second point that I would like to make is, we have looked at the administration's proposals and the documents that they suggest. Our first principal concern is, as we read Attorney General Smith's testimony to you, he requires, or they would require, that the documentation presented must be retained by the employer and be available for inspection by INS and Labor Department officials.

We are talking about, really, a storage problem of tremendous magnitude, aside from the fact that many of these documents should be available for legitimate use by whoever holds them—the applicant for the job. When you talk about a driver's license, clearly, I would not think the Attorney General is suggesting that the employer hold that person's driver's license so that it can be available for INS inspection.

Furthermore, there are a number of logical reasons why any applicant for a job would not have any of this documentation aside from, perhaps, the social security card. Not everyone, as has been pointed out, has a driver's license; not everyone is subject to the draft or to holding a draft registration card. Clearly, not everyone can have a birth certificate. There are many perfectly logical reasons why these documents may not be available to otherwise lawfully employable persons.

My time is up, Mr. Chairman. Those are my principal points.

Senator SIMPSON. Thank you very much, Mr. Neville.

[The prepared statement of Robert Neville follows:]

PREPARED STATEMENT OF ROBERT NEVILLE

Mr. Chairman and members of the Subcommittee, my name is Robert Neville. I am general counsel for the National Restaurant Association.

The National Restaurant Association is a nonprofit trade association with headquarters in Washington, D.C. and offices in Chicago, Illinois. It offers programs in public affairs, education, and research to its member companies. These 10,000 members operate more than 100,000 foodservice facilities in the United States and 37 foreign countries. Our industry is the largest retailer in terms of members of establishments, the vast majority of which are small business.

We appreciate the opportunity to express our views on the identification aspects of the Administration's proposal to make employment of illegal aliens unlawful.

There seems to be a consensus that employment opportunity is the magnet that draws citizens of other countries to ours. We have seen no research to support this conclusion and the government's imprecise estimates of the numbers of illegal aliens in the country do not inspire confidence in their conclusions as to what draws the aliens here. In spite of several years of hearings and the extensive effort of a Select Commission, the magnitude of the problem remains purely speculative and raises the question whether you have the necessary facts to legislate wisely.

I should make clear at the outset that we believe the task of enforcement of existing laws that prohibit aliens from working, and preventing illegal entry in the first place is, after all, a responsibility of government. Our principal concern is with the soundness and fundamental fairness of merely shifting the main thrust of the enforcement burden from the government to the private employer. Your evaluation of this issue should include a full appreciation of existing burdens on the private employer, such as record keeping, paperwork, ensuring that opportunities for employment are provided equally and without discrimination, etc. The private employer's ability to absorb an additional investigative responsibility with its attendant increased costs and risk of penalties should be weighed carefully in determining the nature of any new responsibilities, if any, that are to be thrust upon him. The fundamental question is whether you can transfer the exclusively Federal Government function of determining citizenship to a private citizen -- the employer.

If Congress in its wisdom decides that coordinated action by government at all levels cannot meet its responsibilities without imposing additional burdens on the private employer, we urge that such burdens be simple to administer and not expose him to charges of discrimination by one branch of government in his attempts to comply with the regulations of another branch. In this connection, there is irony in the fact that EEOC Guidelines give that agency authority to seek an injunction against persons "engaged in a pattern or practice of resistance to the full enjoyment of any of the rights" secured by 42 USC 2000 e-6(a). Further, the NLRB has extended the protection of the National Labor Relations Act to illegal aliens.

The Administration proposal would impose civil fines of $500 to $1000 for each illegal alien hired and authorize injunctions against employers who follow a "pattern or practice" of hiring illegal aliens. Some provision for inadvertent violations resulting in no more than a warning should be made. In view of the legal and regulatory mine field the employer must traverse we urge that any legal sanctions against him be applied only where there is clear evidence of repeated deliberate violations. We assume that a "pattern or practice" means an employer whose conduct clearly demonstrates a disregard for the law; a "scofflaw," if you will. But, this is not clear from the Attorney General's presentation and it should be made clear in the law. We would urge the Congress to be precise in whatever standards are imposed and not leave its intent to be expressed in regulations, or to the subjective judgment of government employees.

The Administration proposal would provide a good faith defense to an employer who examines proof of eligibility to work in the form of a permanent resident alien card or temporary worker visa or any two of the following: (a) birth certificate; (b) driver's license; (c) Social Security card; and (d) a registration certificate issued by the Selective Service System. All questions of the validity of these identifications as evidence of eligibility to work aside, our principal concern with this portion of the Administration's proposal is that the documentation presented must be retained by the employer and be available for inspection by INS and Labor Department officials. We are also concerned that lawfully employable applicants may be expected to have only the Social Security card. There are many logical reasons why they wouldn't have any of the other acceptable documents. If the documentation offered by the employee is to be retained, the requirement poses major storage problems for the employer and deprives the employee of the use of the documents for other perfectly legitimate uses. If it is intended that the employer make copies and retain them, significant expense and storage problems are raised for the employer.

The proposal overlooks a major problem in avoiding discrimination in employment, i.e., whatever form of identification is required, it must be uniformly applied to all applicants. Otherwise, the employer is left in the position of making judgments as to which applicant may be illegal aliens. If the employer is required to engage in time consuming, expensive procedures only for those applicants who look foreign or sound foreign the motivation for discrimination in employment and to play it safe is apparent and strong.

We recognize the feelings of those who oppose any form of national identity card, but we also strongly believe that if the Government, for whatever reason, decides that the solution to achieving control over the illegal alien problem must involve the business community, then it must devise some mechanism which will provide the employer with clear, objective, and simple guidelines upon which he can base his actions secure in the knowledge he is acting within the law. Since the Social Security card plays such a dominant role in our tax system, it appears to be the logical candidate to fill this need.

Every proposal to resolve the illegal alien problem has focused on the employer's role. We believe that any overall plan must require active participation and accountability by the various government agencies charged with administering social welfare and assistance programs of all types. Providing these benefits to illegal aliens is a factor in the overall problem and one must believe their availability is a factor in attracting people to this country. If the employer is to perform the task of denying employment to illegal aliens, cognizant government agencies at all levels should bear an equal responsibility to deny benefits to ineligible aliens and be held to the same standards of accountability. This poses a question which may appear to be rhetorical, but merits your thoughtful attention. If the denial of employment program is successful, what happens to the millions of persons who are effectively precluded from securing the necessities of life through their own efforts? The Administration's proposal to offer legal status to those here prior to January 1, 1980 may alleviate this problem considerably, but the estimated current rate of influx still raises serious questions for a compassionate society.

In summary, we believe that the Administration's proposed identification system poses costly record retention burdens on the employer. We believe that the responsibility to bring the illegal alien problem under control is a proper government function and that all the resources of government should be brought to bear on the matter, before additional burdens are thrust on private citizens. We believe that if the business community is to be required to assume major responsibilities to deny employment to illegal aliens, the Government should provide a simple, economical mechanism to enable him to comply with the law without risk of penalties or the opprobrium that attaches to public allegations of unlawful conduct.

Senator **Simpson**. What all of you are saying is what the subcommittee is well aware of and that is that whatever plan we eventually come to on employer sanctions and verifiers, must be something that does not place an excessive burden on the employer.

I think that is very important and I think we all realize that the employer cannot be in the orchard with the clip board. There are just certain things that we cannot demand of the employer, and yet, the employer has a very clear role and a very distinct role, and a very critical role. But, as you say, it must be a clear, simple, and direct act that we are requesting of it. I think we all agree with that.

I do want to allay one of your concerns, Mr. Neville, and that is that the administration plan does not propose to keep any document that is presented, that is not what they would retain. The only thing they would be retain would be the signed certification. I think that is an important point. I would have the same concern you do if that were what the administration proposed. But that is not, only the signed certification is what they would retain.

Under the administration's plan no employer could be penalized if the employer did not actually hire an illegal alien. Some persons have suggested that an employer should be penalized for not following the verification procedure, even if no illegal alien employee had been hired. What do each of you think about that particular issue? Mr. Brown, first.

Mr. **Brown**. I happen to agree with that particular issue. I think that if the law says that we are to ask every employee for certain identification, I think it should be across the board, whether anyone is caught having someone who is undocumented in their employ. What is good for one, is good for all.

We have no problem in our industry with the idea of asking for something from all of our people. One of the objections we have is, the document that were suggested are so easy to be forged, we would like this program to be successful. What we are concerned with is that it will not be successful.

You know, we have for example so-called green cards. They are a piece of cardboard. In Los Angeles they go for about $10 each, and on a bad day you can get them two for $10. I mean, anybody can get them, they are so easy to be counterfeited.

So, what I am saying, it is so easy to counterfeit those different things, you can get green cards, you can get any documents that you said, they are just pieces of cardboard. If it is going to be successful, I think we should be asking them for something that means something.

Senator **Simpson**. Excuse me, please. I do want to be attentive, and this is the first lapse. Just repeat that, I would be interested in that last comment.

Mr. **Brown**. I just said that we are concerned with the fact that the documents that you have listed here, the majority of them could be counterfeited so easily that they are just pieces of cardboard that any printer can make up. They do print them up. If workers are coming to us now—and that is nothing that we are proud of—if we say something that we have too many Gonzalez working here, they have one that says Rodriguez. I mean, it is no problem. They have two of them in their purse or in their wallet.

If the program is going to be successful it has to be a document that means something. That we should be asking from all employees. If the law says we have to have a social security number if we hire somebody, we have to have it from everyone, whether they are documented, undocumented, no matter who they are. I think the same thing should apply to this identification.

Senator **Simpson**. Well, if that were not the case, then indeed discrimination would take place.

Mr. **Brown**. That is correct.

Senator **Simpson**. That is assured.

Mr. **Brown**. That is correct.

Senator **Simpson**. So, that is what we have been saying consistently throughout the proceedings. Of course, the proposal of the administration in these areas of identification cards is probably the biggest difference they have with this chairman. That is the one aspect of the administration's proposal that weakens it in a very critical way, and that is the recommendations on cards or identifiers. That is why I think we must go to some other type of verification or identifier. That was where the administration could not seem to chew the cartridge.

Mr. **Brown**. Mr. Neville mentioned a computer bank that had a recording of all numbers on it. Every social security number is listed. If that number were sent in, would there not be some way to let us know our position? Our responsibility then would be to social security, the numbers would go in and we would get it back with some sort of an indication as to whether we can hire this person or not, or keep him in our employ. It is a memory bank, that I am referring to.

Senator **Simpson**. That is under consideration by the subcommittee as a method, a universal electronic data bank like the Master Card system that is activiated by a number. The number would be on the work authorization card which would have a backup information system which would be limited to one fact—not twenty facts like the social security card, which should cause persons concern about intrusion in their lives.

But this backup on this card would simply say, "I am authorized to work in the United States of America." It would not say, "I am a citizen of the United States." I would not say, "I am a permanent resident." It would not say, "I am a registered alien." It would simply say, "I am authorized to work in the United States of America" with a number. You would then verify the number only as clear, or not clear.

There are those who look upon that with some high degree of glee as an absurdity, but it is what we do when we charge something with the Master Charge and it is activated only by a number, not by economics, or race, or origin, or politics, or anything of that nature. That is a type of system we are very seriously looking into, and it would be the least intrusive type of thing I could imagine. The card being required by the person there only at the time of new hire. He would not have to carry it in his wallet. He would not have to carry it out on the highway or down the street, or produce it anywhere in his experience.

So, that is what we are pursuing, too. Anyway, I would appreciate your views on that, Mr. Ellsworth, that question. It was asked so long ago that you have forgotten it.

Mr. **Ellsworth**. May I take them in reverse order for just a moment?

Senator **Simpson**. Sure.

Mr. **Ellsworth**. The data bank situation is very good. We do not view it with glee as an absurdity, but we have some concerns about it.

In agriculture, an employer may have 90 workers to check out on a given day. He can look at 90 cards and can put 90 workers to work. Otherwise he has to record those 90 cards, still put the worker to work, go inside to a telephone some place, call, and get the verification.

If he has hired someone that is not authorized to work, he must go out and fire that person, but pay him for the intervening period of time, whatever it was.

It presents a little different problem for agriculture. However, at this point in time we want to see which one can do the best job.

To go back to your original question, sir, should every employer be required to examine the credentials of every new hire, regardless of what that person looks like. I was prepared to say, no, that if he wants to run the risk he can because there is on the books the Civil Rights Act and other protections for this sort of thing. If he gets caught at that, he gets caught.

On the other hand, upon sober second thought I would say that we would go along with running right down the line, examining credentials for all employees.

Senator **Simpson**. Mr. Neville?

Mr. **Neville**. A very important part of it because, assuredly, if that is not the case, then the discrimination which is so feared will indeed take place, or could take place.

Mr. **Ellsworth**. The discrimination may or may not occur. In the process of that discrimination, however, the person is being asked to identify himself as a legal citizen.

I feel, I guess, a little discriminated against when I try to get into the Department of Agriculture down here. Everybody else who is hired there has a tag, and they walk in and out willy-nilly, but I have to stop and dig out identification to prove that I can go into the institution that I am supporting as a taxpayer.

There is bound to be some of this in some places. However, I go back to my original statement, sir, that I think an employer for all intents and purposes, would be a fool not to check everybody because, as I said before, not every illegal alien in this country comes from south of the border, nor from Guam.

Senator **Simpson**. There you have hit upon one of the myths of the illegal alien issue, and that is that less than 50 percent of the illegal aliens are Hispanic.

Mr. **Ellsworth**. Right.

Senator **Simpson**. The whole spectrum is there, and that is why it is so critically important that it be a universal identifier or verifier.

Mr. **Brown**. May I say something along those lines, Senator, since you brought it up?

I am very familiar with some of the raids or sweeps that I have mentioned to you before. I have seen the INS agents come through plants where maybe there are 200 or 300 workers. They only go up to the ones who look like Latin Americans and question them to hear whether they speak English or not. They do not walk around and speak to anyone else whether they are documented or not documented.

In a sense I consider this against the civil rights of these people. They, themselves, go after what you look like, not whether you might be documented or not documented. Of course, I guess the odds are in their favor, they are not wasting their time. But I consider it against the civil rights of our workers.

Senator **Simpson**. That is offensive. Mr. Neville?

Mr. **Neville**. Yes, Mr. Chairman. I think the point that you were making at the beginning is also included in our statement. I would like to confirm that fact.

Whatever form of identification is required, it must be uniformly applied to all applicants, otherwise the employer is left in the position of making judgments as to which applicants may be illegal aliens. Of course, if he has to go through a particular procedure only where it involves a person who may be an illegal alien, it is very easy for him to make the judgment that he would prefer not to go through those procedures—they are time consuming, they are expensive.

So, he just decides in his own mind, "This person is obviously a citizen, I will hire him," or, "He is obviously here legally, I will hire him; but this person looks different, so I do not want to go through this process."

I think it has several lessons for us here, though. I think No. 1 the lesson is, do not make the procedures too complex or you promote this kind of thing.

No. 2, I am very much concerned about the emphasis on punishment or the sanctions that are going to be imposed on an employer who hires one illegal alien, under the administration's plan a $500 to $1,000 fine. We have to recognize the fact that businesses do not operate always with the same people.

You do not hire somebody to be your personnel officer or your personnel director to hire your new employees and have him stay there for 30 years; that just is not the way business is organized. So, you have new people coming in all the time who are going to do the interviewing, the processing of applicants, and there is no point in saying that just because someone makes a mistake and takes somebody on board that he should not, that company is going to be immediately branded as having committed an unlawful act.

The great majority of business people do not like to be branded as having committed an unlawful act.

Senator **Simpson**. I believe that is true. Of course, the legislation, when presented, will establish what has already been discussed, the type of "pattern and practice" of utilizing illegal aliens. Of course, the President's or the administration's proposal does not apply to those employing four or less employees. So, you can be assured that is something we have targeted for our work, it is clearly defined.

Do you believe that employers seeking to discriminate against applicants on the basis of ethnic background would really find an excuse for doing so if we have the employer sanctions law in effect and a secure means of verifying work authorization?

In other words, if an applicant's work authorization was verified through that procedure, I do not see how an employer could use the fear of penalties or sanctions as a reason not to hire somebody any longer. Do you share that view?

Mr. **Neville**. Not if it is uniformly applied.

Mr. **Brown**. I share that view.

Senator **Simpson**. Do you, Mr. Ellsworth? You know, in testimony through the last weeks and in the Select Commission activities we were always presented with the fact that there are employer sanctions laws in 12 States, and that there has only been one prosecution, some fellow for $250.

Why would you believe that employer sanctions laws already on the books in various States are not being enforced, and how then could we best assure that the law would be enforced at the Federal level? I would appreciate your thoughts.

Mr. **Brown**. Would you ask the question again?

Senator **Simpson**. Well, we have 12 States that have employer sanctions laws, and there are very few prosecutions, very few activities—whether that is because of penalties or the lack of glamor of that type of activity, or whatever it may be. But they do not seem to work on the State level.

Do you have any thoughts on how we might assure that such would work on the Federal level?

Mr. **Brown**. I can tell you, a fact that I alluded to before in something that I said, the fact that even INS when they come in, they do not see someone and say, "Are you from Canada, do you have a work permit?"

They go through and they look for just one group of people, which in our particular area happens to be in most cases Latinos—they do not even ask the Orientals in this case—they go through and they ask the ones who look like they are Latinos.

In turn, the employer, the easiest thing in the world for him to do is just say, "I did ask for a green card." As I said, they all have them. There is no identification that is reliable. At the same time, I do not think that the country, the State, is doing their part now to look on a broad base as to who is here legally and who is not here legally.

I think they are doing it by, "What do you look like" more than anything else, or, "What neighborhood are you living in?"

Unfortunately, there are sweeps in the streets also in Los Angeles, and that is going on even today. In these sweeps they go into particular areas and they pick up everyone on the street. What areas do they go into? They go into an area that is a Mexican, Latin American area.

I do not think that we have handled it the right way. I think that this is a start, what we are talking about now. It is at least a tool to start having some kind of total regulation that we can live with.

Senator **Simpson**. What we have come to find is just the reality that no system like that is going to work without an identifier.

That is why the State systems do not work; that is why county and district prosecutors do not care to mess with them.

So, this would be the critical difference between a new Federal proposal.

But what you say about the green card is so true. I am continually presented with literally barrels of green cards that are just forged, and dealing with the INS personnel and their deep frustration. Again the green card is the easiest one to forge. Then from that comes the authentic documents, and that is the whole mission of the reform.

I always like this little graphic because it is so very real. Here it is. This is a fake. From that fake green card was begat an authentic social security card, which begat an authentic AFL-CIO card, which begat a food stamp supplement card, which begat a medicare-medicaid card, which begat an authentic driver's license, which begat an authentic unemployment insurance card.

The issue there is once again of not how much is left on the table, or how much they took out, or whatever happened. The issue is, that diminishes the system. Our system of life is diminished by that type of activity.

So, I do keep coming back to it and, being a persistent rascal, we will continue to pursue it.

Let me just ask another question. How much of an additional burden—because this is key to me that we do not put an additional or heavy burden on the employer—but how much of an additional burden would it be for employers in each of your representative groups to, say, instead of asking for a social security number, asking for the card and, say, copying the number?

Mr. BROWN. The number itself, or photostating the card?

Senator SIMPSON. Just copying the number.

Mr. BROWN. You mean in the personnel records?

Senator SIMPSON. Yes.

Mr. BROWN. That would not be any problem at all, quite frankly. It is just a matter of someone putting it in the personnel record. But are you talking about a social security card?

Senator SIMPSON. No.

Mr. BROWN. You are talking about this other identification card?

Senator SIMPSON. Instead of asking for a social security card, if we were to go to a different identifier system, how much of an additional burden is it simply to look at this card which we would envision would say, "I am authorized to work in the United States of America," and putting that number down on the personnel record.

Mr. BROWN. That is all there is to it?

Senator SIMPSON. That is it.

Mr. BROWN. No problem whatsoever.

Senator SIMPSON. Regardless of whether it would be a harvest situation, or agricultural employee situation?

Mr. ELLSWORTH. We are recording social security numbers all the time. The only problem I have on it, and it is minor but I will mention it, is that it is just one more set of numbers to put down, and the possibility of making a mistake in copying the number.

At least in social security if you make a mistake, as I did one time in transposing two digits and sent the money in for that employee's credit, the social security system comes back and says, "Sadie Jones does not have this number" I immediately recognized what I did and sent the correct number, and everything was fine and I was not penalized.

But if we get a wrong number on this thing somehow in copying, that would be the only thing.

Mr. NEVILLE. Senator, what would that do? I mean, there is no way of knowing whether that is a legitimate number or not. If it is just a series of numbers, anyone can walk in and give you a series of numbers.

Senator SIMPSON. I know. I am just asking about the burden on the employer by that process, whether that is an additional or undue one. Whether that would be an undue burden, that suggestion of the subcommittee and the suggestion of the legislation.

The other one would be that sometime after being given a number or a card, the employer receiving that, that there might have to be a verification through an electronic data process, a telephone call to verify that number. Would that be an undue burden on an employer?

Mr. BROWN. Not to my mind.

Senator SIMPSON. Mr. Ellsworth, do you want to think that one over a bit?

Mr. ELLSWORTH. No, sir. I cannot give you a definite answer at this point in time. I have heard from my members both ways, but I will be perfectly honest with you, I think we would have to see exactly how the system would work to give you an answer.

Senator SIMPSON. Mr. Neville?

Mr. NEVILLE. I am pretty much in Mr. Ellsworth's situation on this, Senator. If it is a matter of a phone call, one of the problems that I could see in our industry is that you bring somebody on and they go to work immediately. If they have to make that phone call in the middle of a noon rush, how fast do you anticipate that this phone call is going to have to be made?

Once you find out that the number does not coincide with being eligible for employment, how fast do they have to get rid of that person? What is the process that they go through?

These are things that really enter into the problem because you have to keep personnel records of everybody you hire, as you know. Recording the number would not be any problem because we have to keep the records of their hours worked and everything else anyway.

Senator SIMPSON. Just a final question. One of our later witnesses, David North, suggested in his testimony as an interim measure that employers be required to—do not jump up when I say that, stay right there—that employers be required to obtain an affidavit from each new hire. This would be a form which they would sign.

You would just say, "This is an affidavit"—they may not even know the meaning of the term—"but it is a document that you must sign that says you are authorized to work here."

It would be an affidavit. This is Mr. North's suggestion, that they would then keep one copy, one carbon copy for their file and submit the other, along with the other varied ones, many of them, to the INS.

Admittedly, there is so much to be discussed here, it is getting the INS up to full scale, making it a working governmental agency instead of the tattered operation that it is right now.

But then INS would investigate a sample of those affidavits which it would receive from employers. That would then generate leads for field investigation and presumably the probability that an illegal alien would then be apprehended at the work site would certainly be increased, at least for jobs where the turnover was low.

What is your comment on that proposal?

Mr. **Ellsworth**. I will start out by saying that I think Mr. North's proposal will be great for the paper industry and for unemployement because we will have to hire additional people to do that. With the cost of postage going up to 20 cents, that is another factor in it. And I think that while in theory it is a possibility——

Senator **Simpson**. An interim suggestion.

Mr. **Ellsworth**. Even interim, the practicality of doing that in agriculture, at least, just causes me to say it would not be practical to do it.

Mr. **Neville**. Mr. Chairman, does not the effectiveness of Mr. North's proposal really center on whether the INS has a complete data bank on everybody who is here legally already?

Senator **Simpson**. No.

Mr. **Neville**. How does the affidavit help them? I have trouble.

Senator **Simpson**. The idea—as I at least have understood it through testimony of others when we talked about an affidavit—is that the illegal alien thinks a long time when he signs his name to something.

They are, of whatever ethnic group, perhaps more particularly with the Mexicans, the Office of Notary Public is a rather impressive office in that country. And that when they are told, "You have to sign this and it means that you are saying that you are legally here in the United States," the thought is that many will not sign that.

Now that, then, would be a deterrent to hiring of illegal aliens. But that has been part of that. I know, as I have listened to the testimony, it was an interesting part to me. That is only one part of it.

The other is that it is just a form that he discusses, and it is only for the interim, it is only for the transition period from going from where we are now, which is nothing, to a universal identifier system.

Mr. **Brown**. Senator, a lot of our workers, documented or not documented, speak very little English. They can understand, but they speak very little. Their comprehension is low. I think you are going to find a lot of documented who will be unwilling to just sign a document. You are going to say, "Go ahead and sign this, it is perfectly all right." They cannot read it, they do not know what it is. I think we would lose regular workers too who are documented, who are in this country legally.

I have to tell you this, a lot of them who are documented are afraid of anything to call attention to themselves, including just signing a blank paper, anything with their name on it because they have maybe people at home who are not documented; or they do not even know if they are documented. They do not even know if they are in this country legally or not.

I personally do not think that is a good way to go. I think there has to be a better way.

Senator **Simpson**. Even as an interim measure?

Mr. **Brown**. Even as an interim measure.

Mr. **Ellsworth**. I have already expressed a view on that. Do you want to say something?

I am getting a little excited here about another thought I have, which often occurs. We are talking about enacting legislation to apply against employers, and at the present time with the U.S. Employment Service of the Department of Labor, which service many farmworkers use, which service many farm employers use, and which is used also by the nonagricultural workers and employers, the Employment Service has in its instructions at the moment that if a worker comes into one of the offices and asks if there are any jobs, the Employment Service shall ask that worker, that individual, "Are you a citizen of the United States," and if that person says "Yes," that is all. No other questions, no nothing.

Now, I would hope, sir, that as your committee looks at this whole ball of wax, that that is not a little item that falls through the chinks where the Department of Labor can be outside the requirement if it is going to refer workers to U.S. employers because I think this could be another effective point of screening.

Senator **Simpson**. I hear that. The issue, however, would never be, "Are you a citizen of the United States?" The issue is, "Are you authorized to work in the United States," that is the distinction that we will consistently pursue.

We really appreciate your testimony, it has been very helpful.

We will recess now until 1 o'clock, at which time we will begin with the Hispanic organizations panel. I thank you all very much, Mr. Brown, Mr. Ellsworth, Mr. Neville, you have been very helpful.

[Whereupon, at 12:15 p.m. the subcommittee adjourned, to reconvene at 1 p.m. on the same day.]

AFTERNOON SESSION

Senator **Simpson**. The subcommittee will come to order. I do apologize to both of you, Arnold and John. We were having a briefing just for Senators only on the MX missile proposals and of course that has much more of an effect on the western United States than other areas. Interesting proposals have been presented which you will soon find out about, that I will not bother you with at this time.

So, if you will please proceed. I appreciate having your testimony.

STATEMENT OF JOHN HUERTA, ASSOCIATE COUNSEL, MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATION FUND

Mr. **Huerta**. Senator, for the record, I am John Huerta from the Mexican American Legal Defense and Education Fund.

Senator **Simpson**. I am sorry, I did not make my usual introduction. We have Arnold Torres, the League of United Latin American

Citizens, LULAC, and John Huerta, the Mexican American Legal Defense Fund. I apologize.

Mr. HUERTA. Thank you for the opportunity to be here. Mr. Torres is going to direct a critique that I have in my formal written statement which I would like submitted for the record, of what the administration is proposing to do. I would like to direct my comments as to what I understand to be your proposal.

While the proposal sounds as if it is going to apply to all workers in the United States, it is my understanding that it will be applied first to all new hires. The effect of this approach is to place the heaviest burden on those employees with the highest turnover rate.

Unfortunately, in our society because of prior discrimination in education and employment opportunities, minorities are overrepresented in this category.

Another opportunity for discrimination against minorities will be in the issuance of the card itself. To the extent the card is made more secure by requiring several types of identifiers it will be difficult for Hispanic citizens to obtain the work-eligibility card.

For instance, many Hispanic citizens may not possess the required documents. Because of poverty and inadequate access to health care many Hispanic children are not born in hospitals and often their parents fail to register their births. For these Hispanics the only birth record is the baptisimal certificate. Will that be accepted as proof of work eligibility?

Because the documents required for certification are themselves forgeable we fear that, even if Hispanics can produce them, authorities may challenge their authenticity. I refer you to the newspaper article I submitted for the record Wednesday, regarding the case of a U.S. citizen, Puerto Rican, who was jailed for 6 days because an immigration officer would not accept his birth certificate, driver's license, social security card, and union membership card as proof that he was an American citizen.

This is an extremely common problem in our community with reference to the Immigration and Naturalization Service. So, it is not a false problem and it is one that I can give you many examples of if you are interested.

Yet another opportunity for discrimination in the system is at the actual time of job application. Will the employer ask all job applicants for work-eligibility cards or only those who look foreign? Most likely employers will only scrutinize Hispanics, blacks, and Asians, and will hire Anglos.

Because of the burden which employer sanctions place on employers, they may try to reduce their costs by cutting down on minority members of the work force who have higher turnover rates.

The law is written to require the employer to check all new hires. How will the Government enforce this requirement as approximately 50 million American workers will either enter or reenter the work force or change jobs by 1982? The Government will probably only target those employers who are most likely to hire foreign workers. The result will be a clear message from the Government not to hire the foreigners.

Since we are concerned about discrimination, I would recommend the adoption of several different actions to avoid that possibility. One would be to amend title 7 of the 1964 Civil Rights Act to add alienage as a protected classification. That step is necessary because of the widespread discrimination in this country against noncitizens.

Also, I would suggest that we amend title 18, section 141, which protects citizens from conspiracies by such groups as the Ku Klux Klan to deprive them of their civil rights. Right now, noncitizens, legally present immigrants do not have that protection. I think it is one of the travesties of this country when you can make that type of distinction in the full coverage of the laws.

Another item I think that we could do would be to adequately give resources to the Civil Rights Division of the Department of Justice and the EEOC to bring enforcement actions for employment discrimination in this area.

Finally, in terms of adequately enforcing existing laws, Senator, one of the comments you made earlier was that an undocumented will not file a grievance about conditions of employment that violated laws becaue of their undocumented status. That is a definite problem in the laws that now exist. We could either bifurcate INS enforcement from labor law enforcement or, alternatively, create an incentive by rewarding the undocumented aliens who come forward and denounce violations of OSHA or minimum standards by permitting them to have amnesty or legalize their status based upon that action. It would create a tremendous incentive to clean up a lot of these areas in the country.

Finally, I do not think INS resources have been made available adequately, historically, in this country and I do not see the Congress moving in the direction to do it. I think an employer eligibility system is an experimental system that we are about to embark on without really having tried to enforce the laws that are before us.

When these people from INS come before you and say that they have adequate resources now, they have that limitation from OMB placed on them. I worked in the Department of Justice for 3½ years and you are told in detail that you cannot oppose the administration's position on whatever the number of dollars, work years, and positions that the administration requests. INS will tell you out in the hall privately what their situation is, that they do not have gas to run their Jeeps; they do not have helicopters, they do not have sensor devices, and they do not have the personnel to adequately do the function they would like to do.

Also, they will tell you in terms of resources there is a tremendous backlog right now of people who want to become naturalized U.S. citizens. This is depriving them of their civil rights in that they cannot vote until they become citizens. The backlog is upwards of a year. The LA office is currently receiving something like 2,500 applications to become citizens a month and can only process approximately 1,000 of these applications a month, given their current—last year's—resources; not fiscal year 1982, which are even less.

Thank you, Senator.

Senator SIMPSON. Thank you very much.

[The prepared statement of John Huerta follows:]

PREPARED STATEMENT OF JOHN HUERTA

My name is John Huerta. I am the Associate Counsel for the Los Angeles office of the Mexican American Legal Defense and Educational Fund. MALDEF is a national civil rights organization dedicated to the preservation and vindication of the civil and constitutional rights of close to 15 million Americans of Hispanic descent. Currently, we have offices in San Francisco, Los Angeles, Denver, Chicago, San Antonio and here in Washington, D. C. For the past several years, much of our work has been concentrated in the areas of employment, education, immigration and voting rights. Given the nature of our work, we are keenly aware of the significance of the issues before this subcommittee today and appreciate the opportunity to testify at these hearings.

Our President and General Counsel, Vilma S. Martinez testified on May 6, 1981, before the Joint Senate/House Hearings on Immigration and at that time provided the Committee with a thorough and detailed analysis of MALDEF's position on employer sanctions and a national identification card and other often-debated immigration issues.

Mr. Chairman, thank you again for this opportunity to testify before the Senate Subcommittee on Immigration and Refugee Policy on the subject of employee identification systems.

Last Wednesday, September 30, 1981, I presented MALDEF's concerns about the overall concept of employer sanctions: (1) the Hispanic community will suffer increased discrimination, (2) sanctions will not stem the flow of undocumented workers to this country because of "push" factors such as lack of economic opportunity in the source country, and "pull" factors such as desire for family reunification and a higher standard of living in the U.S., (3) employer sanctions will cause an increase in domestic unemployment and inflation, and (4) sanctions will not be effective because of the massive resources needed to fully implement the program. On balance, therefore, employer sanctions are a costly, ineffective device to control unlawful immigration, with negative side effects for the economy, the public interest and minorities.

Today, I am here to discuss with you the dilemma posed by proposals for an employee eligibility system, which has the potential for becoming a national I.D. card.

The Administration's proposal, which relies upon an employer certification of new hires is the worst possible approach to the issue from the standpoint of discrimination. It increases the incentive for employers to steer clear of hiring "foreign looking" workers, as the sanction is only imposed for the actual hiring of undocumented workers. In fact, according to the Acting Commissioner of INS' testimony on September 30, 1981, the Administration plans to target only those employers that hire a large number of immigrant workers. Since Hispanic citizens often work alongside the immigrant population, Hispanics will receive the closest scrutiny from these employers; non-foreign looking citizens will not be subject to the same scrutiny in the workplace. Indeed, a more discriminatory system could not be conceived.

As I understand it, you are proposing a national work eligibility identification card for the purpose of making an employer sanction provision more effective and less discriminatory. MALDEF's conclusion, after careful scrutiny, is that any employer sanction proposal, even one with a national work eligibility card, will lead to more discrimination against Hispanics and other "foreign looking" U.S. citizens.

While the proposal sounds as if it will apply to "all" workers, it will in fact be applied only to all "new hires". The effect of this approach is to place the heaviest burden on those employees with the highest turnover rate. Unfortunately, in our society, because of prior discrimination in education and employment opportunities, minorities are overrepresented in this category.*

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*See e.g., E.E.O.C., E.E.O. Report: Job Patterns for Minorities and Women in Private Industry, P. XVII. (1975)

Another opportunity for discrimination against minorities will be in the issuance of the card itself. To the extent the card is made more secure by requiring several types of identifiers, it will be difficult for Hispanic citizens to obtain the work eligibility card. For instance, many Hispanic citizens may not possess the required documents. Because of poverty and inadequate access to health care, many Hispanic children are not born in hospitals and often their parents fail to register their births. For these Hispanics the only "birth record" is the baptismal certificate. Will that be accepted as proof of work eligibility?

Because the documents required for certification are themselves forgeable, we fearthat even if Hispanics can produce them, authorities may challenge their authenticity. I refer you to the newspaper article I submitted for the record Wednesday, regarding the case of a U.S. citizen, a Puerto Rican, who was jailed for six days because an immigration officer would not accept his birth certificate, driver's license, social security card and union membership card, as proof that he was an American citizen.

Yet, another opportunity for discrimination in the system, is at the actual time of job application. Will the employer ask all job applicants for work eligibility cards, or only those who look "foreign"? Most likely, employers will only scrutinize Hispanics, Blacks and Asians, and will hire Anglos. Because of the burdens which employer sanctions place on the employers, they may try to reduce their costs by cutting down on minority members of the workforce who have high turnover rates.

If the law is written to require the employer to check all new hires, how will the government enforce this requirement? As 50 million American workers will either enter or re-enter the workforce or change jobs in 1982, the government will probably only target those employers "who are most likely to hire "foreign workers." The result will be a clear message from the government to the employer not to hire the "foreigners".

While it is possible to pose numerous circumstances as to how discrimination may arise in a worker eligibility system, I would like to offer a couple of immediate remedies that Congress could act on now.

Since we are all concerned about employment discrimination, I would propose that the Congress pass legislation amending Title VII of the Civil Rights Act of 1964 to prohibit discrimination in employment based on "alienage". Such a step is necessary because discrimination in the private and public sector against non-citizens is fairly wide-spread and is repugnant to the principles of the 5th and 14th Amendment of the Constitution. Such legislation is also necessary because if Congress eventually passes an employer sanctions proposal, many Americans, especially employers, will interpret such a proposal as "anti-alien".

Additionally, there may be a strong backlash by American workers and employers against all "foreigners" because of added burdens, regulations and taxes, associated with employer sanctions. For this reason, Congress should also amend Section 141, Title 18 of U.S. Code, to protect non-citizens from conspiracies by groups like the Klu Klux Klan to deprive them of their civil rights. Currently, only "citizens" are entitled to that protection. This also is repugnant to the 14th Amendment.

Congress must adequately fund the Civil Rights Division of the Department of Justice and the E.E.O.C. to assist in the fight against job discrimination. The Civil Rights Division is currently operating with the same resources (in terms of positions) as it had in 1972 despite numerous increased responsibilities.

Finally, MALDEF shares many of the privacy concerns that are raised by the ACLU and by the Notre Dame University Law School Research Study on Employer Sanctions. The more secure an employer sanctions scheme is made, the greater the opportunity for potential abuse of one's right to privacy. Hispanics value their right to privacy as much as anyone else in our society; and, we do not propose to bargain that away for the hope of a less discriminatory employer sanction proposal.

Senator SIMPSON. Yes, Arnold, please.

STATEMENT OF ARNOLD TORRES, EXECUTIVE DIRECTOR, LEAGUE OF UNITED LATIN AMERICAN CITIZENS

Mr. TORRES. Before I begin I want to take this opportunity to apologize to the chairman, his staff, and to the members of the subcommittee for submitting our testimony late and not allowing you enough time to prepare questions for us. I would hope that that would not be held against us in the future. If we would like to come before you and testify we will make sure we will submit it in time.

I would like to thank you once again for giving us the opportunity to comment on these questions and I would like to go over some comments that have been made today earlier, and try not to repeat anything of what my colleague, Mr. Huerta, has already provided.

We are concerned with the position of the administration in targeting the enforcement of the employer sanctions law without an ID system, the enforcement in 15 major cities primarily where a high concentration of Hispanic-American citizens resided.

We are concerned when you couple that with the sentiments, or at least the direction, that was taken today by Ms. Meissner when she indicated that they—INS—wanted to work in a very cooperative spirit with the private sector, with the employers—in essence almost saying that they were going to begin to train employers in how to identify undocumented workers.

I think that this is extremely unacceptable and certainly should be nipped in the bud before we get into training programs for the private sector because we must be well aware that this cannot take place when we recognize the search and seizure abuses by INS and local law enforcement; when we see that the Ku Klux Klan is offering and implementing a program to apprehend and deport undocumented workers when there is not enough INS personnel available.

This has caused the death of one Hispanic American citizen in the city of Atlanta when they had mistaken him for an undocumented worker, almost saying that if he was undocumented it might have been OK.

We are concerned that you will get into a situation where the employers will become vigilantes in some cases, those that want in most cases to discriminate against Hispanics.

So, we are concerned with the direction, implication better yet, that Ms. Meissner makes in indicating that they want to work with the private sector.

The other thing that is of concern to us to some extent is the issue that is raised in the comments that now we are concerned about the civil rights abuses and the fact that the Hispanic, that the undocumented worker, is going underground more and more, is becoming the subsociety of this country.

It is our experience as Hispanics in this country that that has been the situation for many years, not only of the undocumented but of the resident and citizen of this country who is of Hispanic descent.

While we do not question certain people's genuine commitment in wanting to protect those things, we are wondering if somehow they are confusing their desire to improve the conditions of Hispanic Americans in this country and the undocumented for the sake of trying to deal with the immigration question.

I think it is very important that we somehow distinguish between those concerns and make sure that there is a very clear understanding of where we are exactly going.

I wanted to bring to the attention of the committee, and primarily to the attention of the chairman, the fact that discrimination—as he well knows—exists on a great level at the present time. As a result of that discrimination you have got a very, very large part of our community in a disenfranchisement situation.

We do not feel that an employer sanctioned program with an ID system is worth the risk of discrimination for our community in assuming that this approach is going to curb the flow or actually stop the hiring of undocumented workers.

You have asked throughout these last 2 or 3 days of everyone, "How can you possibly discriminate against someone if the employer asks everyone for an ID card?"

The problem, Senator, as you and I have oftentimes discussed, is not that there are too many Poles coming over from Poland, the problem is a public perception that the undocumented is virtually and exclusively of Hispanic descent. While you have made it a point throughout today and Wednesday to indicate that less than 50 percent, or close to 50 percent, are of Hispanic descent, that is not the public perception, unfortunately. We went over this point on Wednesday, also.

So, regardless of the fact that you make all employers have to write down a digit number or ask everyone for an actual card the point is—and it was very well made by the representative of the apparel industry from California when he said that when the INS comes in they are not worrying about what the person is doing, they are going to look and they are going to that person who looks Latino. That is what he said, Latino or Hispanic-looking.

So, what difference does the card make? The point that Mr. Huerta has earlier made is, when a person comes in to get the initial card, a card, either a data bank or an ID card, he is going to have to provide a certain type of information in order for the government to give them that identification. That person because he is Hispanic is going to have more problems in securing that card than somebody who is not, simply because of the perception that we previously mentioned.

So, when he goes into the work place it is still not going to legitimize his status any more than before, and especially with an unscrupulous employer. This law does not take care of the unscrupulous employer. No scheme takes care of the unscrupulous employer.

The last question—because the red light just went on—is simply, is this administration, is this Government, in this society at this time going to make an honest commitment to minimize the civil rights abuses of people in this country? I do not think, at least based on what we have heard from Mr. Reynolds of the Department of Justice and what we see happening with the budgets of the INS, of EEOC, et cetera, I do not think that the commitment is there.

Is Mr. Simpson, as chairman of the Subcommittee on Immigration, willing to attempt to buck the President and appropriate a great deal of money in order to make sure that discrimination does not take place? I think that is a very tough question for you to answer. I am on the witness list, but I think that would be something that I think has to be eventually discussed.

Thank you.

[The prepared statement of Arnold Torres follows:]

PREPARED STATEMENT OF ARNOLD TORRES

GOOD AFTERNOON, MR. CHAIRMAN AND MEMBERS OF THE U.S. SENATE SUBCOMMITTEE ON IMMIGRATION AND REFUGEE POLICY. MY NAME IS ARNOLDO S. TORRES, I AM NATIONAL EXECUTIVE DIRECTOR FOR THE LEAGUE OF UNITED LATIN AMERICAN CITIZENS (LULAC). LULAC IS THIS NATION'S OLDEST AND LARGEST HISPANIC CIVIL RIGHTS AND SERVICE ORGANIZATION WITH A MEMBERSHIP OF OVER 100,000 IN 44 STATES OF THE UNION. WE AGAIN THANK YOU FOR THE OPPORTUNITY TO PRESENT OUR CONCERNS AND PERSPECTIVES ON THE ISSUE OF IDENTIFICATION (I.D.) SYSTEMS WHICH LOGICALLY SERVE AS THE FOUNDATION FOR THE IMPLEMENTATION OF ANY TYPE OF EMPLOYER SANCTIONS PROGRAM.

IN OUR TESTIMONY OF SEPTEMBER 30, 1981 BEFORE THIS SUBCOMMITTEE REGARDING EMPLOYER SANCTIONS, WE INDICATED OUR OPPOSITION TO THIS CONCEPT AS WELL AS TO THE IDEA OF ANY IDENTIFICATION SYSTEM. ALONG WITH VARIOUS OTHER REASONS FOR OUR OPPOSITIONS, WE PRIMARILY EMPHASIZED THAT THERE WAS NO DOCUMENTATION THAT SUBSTANTIATED THE COST-EFFECTIVENESS OF AN EMPLOYER SANCTIONS PROGRAM AND ITS CHANCES FOR REALISTICALLY CURBING THE FLOW OF UNDOCUMENTED OR THEIR EMPLOYMENT. FURTHERMORE, WE UNDERSCORED THE DISCRIMINATORY RESULTS SUCH A PROGRAM OF EMPLOYER SANCTIONS/I.D. WOULD PRESENT TO THE HISPANIC COMMUNITY AND OTHER FOREIGN LOOKING MINORITY GROUPS. IT IS WITH THIS IN MIND THAT WE PRESENT OUR CONCERNS AND QUESTIONS WITH THE POSSIBLE I.D. SYSTEM WHICH WOULD SERVE AS THE FOUNDATION FOR AN EMPLOYER SANCTIONS PROGRAM.

THE SELECT COMMISSION ON IMMIGRATION AND REFUGEE POLICY RECOMMENDED THE IMPLEMENTATION OF AN EMPLOYER SANCTIONS PROGRAM BUT WAS UNABLE TO REACH ANY CONSENSUS ON THE TYPE OF VERIFICATION/ I.D. SYSTEM. HOWEVER, THE COMMISSION DID AGREE "ON THE PRINCIPLES THAT SHOULD UNDERLIE A VERIFICATION SYSTEM: RELIABILITY, PROTECTION OF CIVIL RIGHTS AND CIVIL LIBERTIES AND COST-EFFECTIVENESS." ON THE ISSUE OF THE DISCRIMINATORY IMPLICATIONS IN THE LABOR MARKET WHICH WOULD RESULT FROM SUCH A PROGRAM THE COMMISSION STATED:

> ...AN EFFECTIVE EMPLOYER SANCTIONS SYSTEM MUST RELY ON A RELIABLE MEANS OF VERIFYING EMPLOYMENT ELIGIBILITY. LACKING

> A DEPENDABLE MECHANISM FOR DETERMINING A POTENTIAL EMPLOYEE'S ELIGIBILITY, EMPLOYERS WOULD HAVE TO USE THEIR DISCRETION.... THE SELECT COMMISSION DOES NOT FAVOR THE IMPOSITION OF SO SUBSTANTIAL A BURDEN ON EMPLOYERS AND FEARS WIDESPREAD DISCRIMINATION AGAINST THOSE U.S. CITIZENS AND ALIENS WHO ARE AUTHORIZED TO WORK AND WHO MIGHT LOOK OR SOUND FOREIGN TO A PROSPECTIVE EMPLOYER. MOST COMMISSIONERS, THEREFORE, SUPPORT A MEANS OF VERIFYING EMPLOYEE ELIGIBILITY THAT WILL ALLOW EMPLOYERS TO CONFIDENTLY AND EASILY HIRE THOSE PERSONS WHO MAY LEGALLY ACCEPT EMPLOYMENT. WITHOUT SOME MEANS OF IDENTIFYING THOSE PERSONS WHO ARE ENTITLED TO WORK IN THE UNITED STATES, THE BEST-INTENTIONED EMPLOYER WOULD BE RELUCTANT TO HIRE ANYONE ABOUT WHOSE LEGAL STATUS HE/SHE HAS DOUBTS.

IT IS TRULY UNFORTUNATE THAT THE CONCERN AND LOGIC OF THIS STATEMENT WAS NOT FURTHER BROUGHT OUT IN THE COMMISSION REPORT OR IN THE COMMISSION STAFF REPORT. WE DID NOT SEE AN ANALYSIS OF THE DISCRIMINATORY FACTORS INVOLVED IN THE I.D. SYSTEMS EXAMINED BY THE COMMISSION DURING THE COURSE OF ITS WORK. PERHAPS IT WOULD HAVE HAD A NEGLIGIBLE IMPACT FOT THERE HAS CONSISTENTLY BEEN AN URGE TO ACCEPT THE IMPLEMENTATION OF AN I.D. SYSTEM FOR EMPLOYMENT PURPOSES, BASED ON AN APPEARED LACK OF SERIOUS DISCUSSION OF THE PROBLEMS AND DANGERS IT WOULD PRESENT TO AMERICAN SOCIETY IN GENERAL AND THE HISPANIC AND OTHER MINORITY COMMUNITIES SPECIFICALLY.

WE CONTEND THAT THERE IS NO I.D. SYSTEM WHICH CAN FULFILL THE PRINCIPLES LAID OUT BY THE COMMISSION. WE CONTEND THAT THE HISPANIC COMMUNITY AND OTHER FOREIGN CHARACTERISTIC MINORITY GROUPS WOULD SUFFER UNDUE DANGERS TO THEIR CIVIL RIGHTS AND CIVIL LIBERTIES. IT IS OUR ASSESSMENT THAT HISPANICS/THE SPANISH-SPEAKING ARE GENERALLY PERCEIVED AS THE MAJOR CONTRIBUTOR TO THE UNDOCUMENTED WORKER POPULATION. BASED ON THIS, AN EMPLOYER SANCTIONS/ I.D. PROGRAM WOULD HAVE AS ITS PRIMARY TARGETS FOR VERIFICATION INDIVIDUALS WHO APPEAR TO RESEMBLE HISPANICS, THEREFORE ARE

POTENTIALLY UNDOCUMENTED. REGARDLESS OF HOW ANY PROGRAM WAS DEVELOPED AND IMPLEMENTED, THE PRACTICAL IMPLEMENTATION WOULD HAVE AS ITS FOCUS, THE HISPANIC.

NATIONAL WORKER IDENTIFICATION CARD

THE COMMISSION AND MEMBERS OF CONGRESS HAVE DISCUSSED THE USE OF A NATIONAL WORKER ELIGIBILITY CARD WHICH ALL PROSPECTIVE EMPLOYEES WOULD BE REQUIRED TO SHOW FOR PURPOSES OF EMPLOYMENT. SUCH CARDS WOULD BE ISSUED BY THE GOVERNMENT TO THOSE INDIVIDUALS WHO PRODUCE SATISFACTORY EVIDENCE OF THE CITIZENSHIP OR LEGAL STATUS WHICH ENTITLED THEM TO WORK. EMPLOYERS WOULD BE HELD LIABLE FOR HIRING ANY EMPLOYEE UNABLE TO PRODUCE THIS CARD. IN ADDITION, AN EMPLOYER WOULD PROBABLY BE RESPONSIBLE FOR MAINTAINING RECORDS OF ALL TRANSACTIONS WITH EMPLOYEES IN ORDER TO DEMONSTRATE COMPLIANCE TO THE GOVERNMENT.

DESPITE THE APPARENT OBJECTIVITY OF THIS APPROACH THERE ARE INHERENT PROBLEMS ASSOCIATED WITH THIS CONCEPT. IN REQUIRING TO PRESENT SATISFACTORY DOCUMENTARY PROOF FOR ELIGIBILITY AND SECURING OF A CARD, WHAT FORMS WOULD BE REQUIRED? IF THEY ARE TO BE COMMON FORM OF I.D. PRESENTLY USED, IT IS WELL KNOWN THAT THEY ARE COUNTERFEITABLE. BECAUSE OF THIS FACT AND THE PERCEPTION THAT UNDOCUMENTED ARE "USUALLY HISPANIC," OUR COMMUNITY WOULD GO THROUGH "TARGETED" SCRUTINIZING WHILE ANGLO WORKERS WOULD BE SUMMARILY GRANTED WORK. ALSO, UNSCRUPULOUS EMPLOYERS WOULD DEFEND THEIR NOT HIRING HISPANICS BY CLAIMING THAT THEY WERE CONCERNED THE WORKER PERHAPS HAD SECURED HIS CARD ILLEGALLY. THERE IS SUBSTANTIAL INFORMATION ON THE EMPLOYMENT DISCRIMINATION OF HISPANICS. THIS PROPOSED PROGRAM WOULD MERELY PROVIDE ANOTHER OPPORTUNITY FOR THIS TYPE OF AN EMPLOYER TO DISCRIMINATE. HOWEVER, UNDER THIS PROGRAM THE BURDEN OF PROOF WOULD BE MORE DIFFICULT, AND THE EMPLOYER WOULD BE LESS LIABLE.

IN ADDITION, MINORITY GROUPS WOULD HAVE A DISPROPORTIONATE BURDEN PRESENTED TO THEM BECAUSE ONLY WORKERS SEEKING NEW JOBS WOULD BE REQUIRED TO DEMONSTRATE SUCH A CARD. GOVERNMENT STUDIES

SHOW THAT MINORITY GROUPS CHANGE JOBS MORE FREQUENTLY WHICH WOULD RESULT IN HAVING THE LAW MOST HEAVILY APPLIED ON THIS GROUP.

ANOTHER CONCERN FOR THE DISCRIMINATION WHICH AN I.D. CARD WOULD PRESENT TO HISPANICS AND OTHER MINORITY GROUPS IS BY CREATING AN OPPORTUNITY FOR IMMIGRATION AND NATURALIZATION SERVICE (INS) OFFICERS TO STOP MEMBERS OF THESE COMMUNITIES AND DEMAND THAT SOME FORM OF I.D. BE SHOWN TO PROVE LEGAL STATUS. BECAUSE THIS CARD WILL SUPPOSEDLY BE GIVEN ONLY TO THOSE WHO CAN WORK, THOSE UNABLE TO PRODUCE A CARD WILL BE CONSIDERED UNDOCUMENTED. IN ADDITION, WE ARE CONSIDERABLY CONCERNED THAT LOCAL LAW ENFORCEMENT OFFICERS WILL ALSO JOIN IN THIS PRACTICE WHEN IT DOES NOT FALL UNDER THEIR JURISDICTION. THERE HAVE BEEN VARIOUS EXAMPLES OF WHERE LOCAL LAW ENFORCEMENT ENTITIES WERE SUPPOSEDLY ENFORCING IMMIGRATION LAW. THE RESULT OF THESE ACTIONS WOULD HAVE MEMBERS OF OUR COMMUNITY AND OTHERS CARRY OUR CARDS ALWAYS FOR FEAR OF THREAT TO PROVE CITIZENSHIP STATUS. WE HAVE ATTACHED A PORTION OF A STUDY CONDUCTED BY THE AMERICAN CIVIL LIBERTIES UNION WHICH DISCUSSES THE VARIOUS CASES WHICH UNDERSCORE THIS CONCERN.[1]

MEMBERS OF OUR COMMUNITY WOULD HAVE TO CARRY THEIR CARDS DURING WORKING HOURS IN ORDER TO CONTEND WITH POSSIBLE AND PROBABLE EMPLOYMENT RAIDS BY THE INS. THE INCIDENCE OF CARRYING THE I.D. CARD BY OUR COMMUNITY SO AS TO PROVE LEGAL STATUS, WOULD RESULT IN THE DEVELOPMENT OF A DE FACTO SYSTEM OF IDENTIFICATION.

WE DO NOT VIEW PROPONENTS OF THIS APPROACH AS ADVOCATING THIS TYPE OF SITUATION HOWEVER, HOW CAN THESE DISCRIMINATORY RESULTS BE AVOIDED UNDER SUCH A PLAN? CAN LEGISLATION BE WRITTEN TO EFFECTIVELY ADDRESS THESE PROBLEMS? WILL LEGISLATION CARRY PROVISIONS PENALIZING EMPLOYERS, LOCAL LAW ENFORCEMENT AND INS OFFICERS, FOR DISCRIMINATING AND/OR OVER-ZEALOUSLY APPLYING THE LAW? IS THERE A MECHANISM WHICH WILL EFFECTIVELY ENFORCE PROTECTIONS AGAINST DISCRIMINATION? WE ASK THESE QUESTIONS OF THIS SUBCOMMITTEE AND PROPONENTS OF THESE CONCEPTS. WE ARE HOPEFUL THAT THEY CAN BE

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[1] ACLU-PRIVACY PROJECT/NEW YORK CIVIL LIBERTIES UNION, JULY 1981.

HONESTLY ANSWERED, BUT MORE IMPORTANTLY, THAT THEY BE CONSIDERED UNDER PRACTICAL CIRCUMSTANCES AND NOT CONCEPTUALLY.

THE CONCERNS WE LAY OUT REGARDING A NATIONAL I.D. CARD WOULD ALSO APPLY TO CONSIDERATION OF A TAMPER-PROOF SOCIAL SECURITY CARD.

DATA BANK

ANOTHER VERIFICATION SYSTEM UNDER DISCUSSION HAS BEEN THE DATA BANK CONCEPT. UNDER THIS PROGRAM, THE GOVERNMENT WOULD ASSIGN A UNIQUE NUMBER FOR WORK PURPOSES TO INDIVIDUALS WHO HAD SATISFACTORY DOCUMENTATION OF THEIR CITIZENSHIP OR LEGAL STATUS. A FILE WOULD BE DEVELOPED ON EACH WORKER AND WOULD INCLUDE SUCH SATISFACTORY DOCUMENTATION SECURED FOR WORK PERMIT NUMBER AND BASIC IDENTIFYING FACTS OF THE WORKER. AN EMPLOYER WOULD BE REQUIRED TO VERIFY AND CONFIRM WORK NUMBER AND CHARACTERISTICS OF ALL NEW HIREES. ONLY IF INFORMATION WAS CONFIRMED WOULD WORKER BE ALLOWED TO BE HIRED.

WE ARE TROUBLED WITH THIS PROPOSAL AS WITH THE I.D. SYSTEM IN IDENTIFYING WHAT WOULD BE DEEMED "SATISFACTORY DOCUMENTATION," AS WELL AS WITH THE TENDENCIES TO DOUBT AND DISCRIMINATE AGAINST THOSE APPEARING TO UNDOCUMENTED. IN ADDITION, THE DATA BANK SYSTEM WOULD BE CONFRONTED WITH SYSTEM BREAKDOWNS, DELAYS AND ERRORS WHICH WOULD RESULT IN PROVIDING NO GUIDANCE TO EMPLOYEES THUS HAVING EMPLOYERS NOT TAKE CHANCES AND HIRE THOSE NOT TO BE CONSIDERED OR APPEARING TO BE UNDOCUMENTED. ALSO, UNSCRUPULOUS EMPLOYERS COULD EASILY PROVIDE INACCURATE INFORMATION TO THE DATA BANK IN ORDER TO RECEIVE SYSTEM REJECTION, THUS DENYING EMPLOYMENT.

IN DISCUSSING I.D. SYSTEMS WITH OUR LULAC MEMBERSHIP AND HISPANIC COMMUNITY WE FIND AN OVERWHELMING OPPOSITION TO THEIR USE. THE HISPANIC COMMUNITY HAS LONG BEEN OUTSIDE OF THE AMERICAN MAINSTREAM AND ONLY UNTIL RECENTLY DID WE BEGIN TO FEEL AS IF WE HAD THE OPPORTUNITY TO REALIZE THIS ASPIRING LIFESTYLE. IT IS THE FIRM AND UNEQUIVOCABLE POSITION OF LULAC THAT TO UTILIZE ANY TYPE OF I.D. SYSTEM WOULD SERVE ONLY TO FURTHER DISENFRANCHISE

OUR COMMUNITY. THE REQUIREMENT TO PROVE OUR CITIZENSHIP WITH AN I.D. CARD IS AN INSULT TO OUR COMMITMENT AND SUPPORT OF THIS COUNTRY AND ITS IDEALS.

THANK YOU.

Creating a Domestic Passport

Under a system of sanctions for hiring undocumented workers, an identity document would function as a kind of "employment passport." In order to hire workers, employers would rely upon the card to ascertain their applicants' personal identity and legal right to work in the United States.

In this very limited context, a so-called employment passport may not seem particularly threatening. However, we believe that such a document would quickly cease to be merely a passport to employment, and become the domestic or internal passport which is the hallmark of so many modern police states.

Certainly no one intends this result, and proponents of the identity card believe that they can take steps to prevent it. What they may not fully realize, however, is that the government's police powers to stop and search are already sufficient to transform the identity document into a major threat to privacy and freedom of movement.

A look at some Supreme Court decisions over the last decade will illustrate the point. In two 1973 decisions, the Court ruled that an officer arresting a motorist for driving without a license or with a revoked license may search both the motorist and the vehicle. U.S. v. Robinson, 414 U.S. 218; Gustafson v. Florida, 414 U.S. 260. In both cases the search was precipitated by the motorist's failure to carry a valid document. Although six years later the Court struck down random spot checks of driver's licenses and registrations, Delaware v. Prouse, 440 U.S. 648 (1979), it distinguished such searches from those conducted at U.S. borders or at specific checkpoints within the country. The Court has sustained document inspections at border checkpoints and their "functional equivalents," Almeidia-Sanchez v. U.S., 413 U.S. 266 (1973), U.S. v. Martinez-Fuerte, 428 U.S. 543 (1976), and stops by roving patrols for "reasonable suspicion" based on the physical appearance of the occupants of a car, U.S. v. Brignoni-Ponce, 422 U.S. 873 (1975).

In U.S. v. Mendenhall, 48 U.S.L.W. 4575 (May 27, 1980), the Court upheld the constitutionality of a stop and request for identification by drug agents at an airport, on the grounds that the woman had not been "seized" because she could have walked away at any time. The Court distinguished this situation from its invalidation of a stop in an earlier case, Brown v. Texas, 443 U.S. 47 (1979), in which police had stopped a man in a high drug problem area, requested identification, and were refused -- a crime under Texas law. The distinction drawn by the Court was that in Brown the individual had been "seized," in that he was detained, however briefly, and was not free to walk away.

In these cases and others in the lower courts, the police power has been defined as allowing government agents to stop individuals without any particular suspicion of a crime, to request identification, and to search, detain, or arrest people who cannot produce proper documents. Just how far this can be carried is dramatized by the recent case of a New Jersey woman who was stopped for a traffic violation, arrested for driving without her registration and insurance documents, and strip-searched in a cell at the police station.[6]

The Supreme Court decisions just described are directly pertinent to the proposal for a work identity card. Such a card would be very "convenient" to have on hand when Immigration Service officers conduct their regular dragnet searches of factories and bus stations and barrios, and even on the street, since, under Brignoni-Ponce, the appearance of being an alien in a place where aliens are likely to be found is enough to justify a stop and interrogation. Many blacks, hispanics, orientals, and other "foreign-looking" citizens and resident aliens might find it necessary to carry their identity cards all the time, even if there was no law that required it. In fact, because the card would be regarded as reliable identification, many others might also find it "convenient" to have it always at hand, especially people who are young, poor, unconventional in hair style and dress, frequenters of "disreputable" gathering places, or given to walking on deserted streets at night. The line between "convenience" and "necessity" would be blurred, and the card might become "mandatory" by usage rather than by legislation.

The utility of an identity document would be enhanced by the modern technology of instant electronic communications. Many police squad cars and station houses are already equipped with computer terminals affording direct communication with databanks of "wanted" persons, stolen vehicles, and criminal histories. Such technological capability for instant communication by officers in the field with government databanks, the broad police power to make identity checks, and a national identity document that becomes a standard fixture in everyone's wallet, all add up to produce a domestic passport, in fact if not in name.

Throughout their history Americans have instinctively recoiled from the idea of a governmental identity document, recognizing that it is fundamentally inimical to democratic traditions. We should respect and foster that instinct, and resist the temptation to take a step from which there can be no turning back.

Senator **SIMPSON**. I wish you could all share some of the spirited conversations that Arnold Torres and I have had in our time, and I enjoyed them thoroughly because he is a most articulate man and very forceful in his presentation.

As you so ably testified two days ago when we were discussing employer sanctions, it is important that we get away from the high drama and the charged words that so distort this issue. I pledged that I would do that, and you pledged that you would. You have, and I think I have.

Really, to cite certain cases and instances, the Ku Klux Klan is just as repugnant as an organization to me as it is to you. So, whatever they are up to, let them do it in a vacuum somewhere. I do not think it is helpful to discuss what the Ku Klux Klan is up to as being what Congress might end up doing, or what this subcommittee would be referring to, it just is not there.

Vigilantes, you know, phrases like that, that will not get it solved. I am going to keep coming back to that just as surely as you know I will.

But money alone will never solve the problems of discrimination. Discrimination will take place in this country by those who are pinched and shriven, and choose to discriminate, no matter what we do, or you do, or I do. That is the way it is—it really is the way it is.

Mr. **TORRES**. Let me just respond very quickly to that, Senator. I think that is a very, very good point. But that statement on your part has got to also be extended to the argument that you lay out. The argument that you lay out simply is that you want a message to go out to the rest of the world that if they come into this country, the way things were is no longer going to be that way.

Simply, you are saying that this law is going to somehow stop these things from happening. I mean, we are both in that dilemma, you see. We are both in the same dilemma because we are not necessarily saying that money is going to do it, but enforcement of the law perhaps will stop some of that discrmination, and that is your contention also in pushing employer sanctions and an ID system.

I just wanted to interject that, I am sorry.

Senator **SIMPSON**. In your written testimony—just a few questions here—you state that because minorities are more heavily represented in higher turnover jobs——

Mr. **HUERTA**. That is also true of women.

Senator **SIMPSON**. That may well be. I am going to have you two just, by George, answer the question before you come back. Now, that is true—we will say that is true.

But you state that because these minorities are more heavily represented in higher turnover jobs, the employer sanctions law, even without employer discrimination, is somehow discriminatory.

I guess the issue is where we are with this term "discrimination." I have trouble discerning in that, what I think the average person thinks of as "all the vileness" of discrimination.

Mr. **HUERTA**. I think I see where you are coming from, and I did not realize we were so far afield in terms of how we are communicating, what I mean by the term "discrimination."

The problem, as I see it, is that when you have certain groups, minorities or women, that are overwhelmingly in a certain category and you treat that category different from the way you treat the rest of the population who happens to be—the majority of the population with the exception of women—that unequal treatment for me is enough there to create a class of discrimination.

I see that you are saying, "Well, as long as we treat everyone in that subclass—that is all new hires—equally, then there is no discrimination there."

But the point I am trying to make is that there is a difference in approach when you take a class in which minorities are over-represented. And when you add to that the other limitations that are involved in the program and which they are going to run through, and which someone with more stable employment is not going to be subjected to, that is the nature of the discrimination that I am talking about.

Mr. **Torres**. On page 4 of our testimony, Senator, we say that, "In addition, minority groups would have a disproportionate burden presented to them because only workers seeking new jobs would be required to demonstrate such a card." We go on to say simply the point that Mr. Huerta makes in his testimony, that we are in that situation where we do change jobs more in the secondary labor market.

We are saying that it is a disproportionate burden simply for that reason, we have an extremely high turnover. So, we are going to be in a predicament where our legitimacy in this country is going to be repeatedly questioned and repeatedly checked. I think that presents some problems in the practical term as to how people view it impacting on their daily lives.

In other words, when you have a group—regardless of the reason why—sharing a disproportionate burden they are going to feel as though somehow they are being discriminated against. I think that is exactly the point that Mr. Huerta is making, and that is what we are trying to say when we indicate a disproportionate burden.

We try to stay away from the word "discriminatory" in that regard. But simply the practical response would be a feeling of discrimination against them.

Senator **Simpson**. Well, I continue to hone in on this critically important issue, that when we come to the final fruition of legislation, there is another message that will be sent out, that if we come to a card, let us say, or whatever it is that we eventually determine, that document will be required of me too in the situation. One of the little things that makes that more prone to work is that the employer goes to the "clink" if he does not ask me for it, or can.

That, I think, puts the full measure of import on it that I want to convey. I always am dealing with that other one that is not part of what we are up to in the situation.

Mr. **Torres**. Let me ask a question, then, just for my clarification. Are you saying—as we ask in our testimony—are you proposing that in the legislation that you would introduce, Senator, that you would actually have a provision in which the employer would be penalized if he or she does not ask every single person for that card or that number?

In other words, let us say he has a pool of 10 people, he only asks 8 and he does not ask the 2, that he will be penalized for not asking those 2, even though those 2 may be as Anglo as John Wayne—excuse me, with all due respect. I mean, is that what you are saying, that you are going to have that kind of a provision?

Senator SIMPSON. No. I am saying that will be his peril, that is how he can get into difficulty with the law because if he has not asked everyone that is there in that particular employment pattern, he can then suffer at the hands of a penalty.

Mr. TORRES. Then the question comes back, simply, how is that going to be enforced? How would that be a priority for, let us say, the Department of Justice, or INS, or the Department of Labor to actually investigate that?

Senator SIMPSON. Well, those are the things we are going to be examining in the hearing process. That is what we are here for, that is what we are probing.

Mr. TORRES. I wanted to make one——

Senator SIMPSON. Wait just a second, I have a limited amount of time because of my own failure to get started on time, caused by that briefing. So, I would like to develop some questions. Then you can come back. We will extend the record. But I would like to pursue two questions at this point.

Mr. TORRES. Excuse me.

Senator SIMPSON. You also state, Mr. Huerta, that issuance of a card would be discriminatory because certain documents would be required and Hispanic citizens might find it difficult to obtain them.

Now, at the present time social security numbers are issued only upon a showing of certain documents. How would upgrading the social security card—the piece of paper—if we were to do that, change the situation? Are you suggesting that social security number be issued to anyone who might request it, even though in the real world social security cards and numbers are already used for I.D.?

If you could develop that a bit.

Mr. HUERTA. I think you could well issue a social security card to anyone who would request it and only screen them when they apply for benefits. That is the way the system originally was intended to work.

It is just a fact that poor people in our society do not often have as many of the incidences of identification that you and I may happen to have in terms of credit cards and drivers' licenses and other items, especially minority youths may not have the social security card and would have to go through the application process.

The lack of a birth certificate is a more common problem than ought to be in our community, but nevertheless, it is a real problem. It is not a bugaboo and usually there is only the baptisimal certificate—not usually, but it is common to find that the baptisimal certificate is the only item that is available. I do not know whether that is usable under social security or not, or whether you have to go and register your birth and do it retroactively and then apply for the card.

But nevertheless because poor—and that is both blacks and Hispanics—would not have as much documentation they have to go through additional steps in order to get into the system. I do not know what the exact requirements are, what you are proposing in terms of what kind of identification you have to show to get into it.

Senator **Simpson**. You state that, because of the burdens that employer sanctions place on the employers they may try to reduce their costs by cutting down on minority members of the work force, who have a high turnover rate.

Could you develop that a bit more?

Mr. **Huerta**. As I understand——

Senator **Simpson**. Wait just a moment. Will not the burden be the same with respect to all workers, or are we saying, are you saying that minority members have higher turnover rates than others, and what is the source of that belief?

Mr. **Huerta**. The source of that belief is cited in my written testimony. It is a study done by the Equal Opportunity Commission on job patterns for minorities and women in private industry, and it shows that as a matter of course that minorities and women retain their jobs for a shorter period of time.

Now, it could be because they are not having the same—first of all, they are in lower paid categories of jobs and it could be because they need income from other sources and move on more often. It could be because they have larger families and if children are sick they have to miss work and lose their jobs. But nevertheless, it is a fact that there is more turnover among this category of persons. That is where part of the burden would be on the employer.

Another area to me where it seems there is a large burden on the employer—and perhaps the gentleman from the agricultural organization, Mr. Ellsworth does not see this as clearly but it appears to me and maybe he could clarify the record on that—is that when a grower has 40 or 50 workers come on each morning and he collects those numbers just to phone in, you have to multiply that by the number of growers that are taking on day workers each day, and it could be, if there is an agricultural force of 2 million in the country, it could be as many as a million workers. They would all be calling in at about 6 a.m. in the morning to try and get clearance for this new group of workers that they have each day.

While in theory it sounds like a marvelous system because we can get a quick reading on the Master Charge card, with the Federal Government, in trying to call INS, sometimes you just cannot get through on the line within 48 hours.

With reference to that ADIT card system that Ms. Meissner talked about today, she failed to tell you that they do not have computers to read those cards in INS today, so that the government cannot take advantage of the high technology that is involved in these cards because they do not have the money for the hardware to implement it. That is what I am afraid is going to happen with this system.

Senator **Simpson**. First, Arnold, let me ask you, you indicated in your statement that Hispanics will be targeted by employers for identifying themselves while other workers would be summarily granted work.

I would believe that the employer would not have that option if he must report proof that all workers have identified themselves. Would you care to comment on that?

Mr. **Torres**. Yes, because, see, the system that you have simply does not deal with the rejections. In other words, if you have yourself and Mr. Day coming in for a job, and myself, they can reject me and they could have asked me for the same documents that they asked of you both. So, they could have rejected me because they did not want to take a chance on me.

But you do not have a system in which you are going to report rejections because of fear that that person may be an undocumented worker. That is exactly what we are trying to make in that point, that there is no system that will document the rejection. That is exactly where the discrimination will take place. That is the point we always try to make because the perception is that the Hispanic is the undocumented person and not the non Hispanic-looking person.

So, that is a very important thing that I think has to always be taken into consideration, is the outright rejection where the discrimination would take place.

Senator **Simpson**. This morning, perhaps you heard the testimony of Mr. Flemming, the chairman of the U.S. Civil Rights Commission, expressing his opposition to secure work identifiers on the basis that in the future the Federal Government could use the system to violate the privacy of individual citizens.

I am one who believes that these individual American citizens through their elected representatives in Congress will insure that does not occur. But would you please elaborate on how a secure worker identification system would specifically jeopardize—when required of all persons under whatever final method we arrive at—how that would jeopardize the civil rights of Hispanic Americans.

Mr. **Huerta**. The problem is—and I think of a quote from Solzhenitsyn in "The Cancer Ward" in which he talks about Russian Soviet society just little by little collecting more and more data.

In our country it happens to be occurring in individual data banks in social security and INS, and in other places in which the Federal Government has a legitimate interest in collecting data on its citizens because of job programs that it carriers out.

The danger is that the desire—and the suggestion has been made of a computer network to link all of this up into one system. You yourself this morning, Senator, suggested that there be some linkage between birth certificates with death information on it.

There may be someone else who thinks, well, that would be a good idea to have it in this system. What if someone dies and someone else takes over that work eligibility number and starts using that number to call into the data base and, say, he has an illegal alien brother in Mexico and comes up and starts using that same identification? It would be a great idea to record this into the system, and the same way it would be a good idea to have it keyed to birth certificates. You could just go on, and eventually the system builds, and builds, and builds.

That is the civil liberty concern that the Hispanic community has because we are concerned about the protection of our constitutional rights, including our rights to privacy just as any other individual is.

Mr. **Torres**. The point that I would add is again because the perception is that the Hispanic is the undocumented worker, or that there are greater numbers of Hispanics that are undocumented, the application of the law, as much as you insist and as much as you would like to see it applied to everyone, on a practical basis it will not.

Furthermore, we see examples of this with other types of identifications. A case in point is the green card. If local law enforcement—and I think I related this example to you on a personal level once—I was stopped when I had a paper route in Sacramento, California. I was asked for a green card. The green card, in essence, would have been the document that would have legitimized my being in the United States on a Schwinn bicycle, doing a paper route.

Now, if we look at an ID system, or if we look at a card that has a digit number on it, the only way to get that card, the only way to get that digit-number card, is by showing proper documentation that says that you are a citizen. That is the process and the philosophy, I think, of what you have tried to conceptualize with the direction that you are going into.

In essence, that card will legitimize your status in this country. It is very, very easy for a local law enforcement officer or INS personnel instead of asking for anything else from that individual, he or she can as for a card, that one card. It is a very easy thing to do. It is not one that Congress will intend; it is not one that Congress will build a record to allow, but it is one that will happen in the practical implementation of this kind of law.

That is the unfortunate reality of public policy in this country or, for that matter, in any other country.

Second of all, and to make a point, just to try to respond to a point that you made earlier, there are many societies, many countries, that have many democratic institutions. The unfortunate reality there is that the countries are much smaller, do not have the diversity of ethnic groups that this country has. But most importantly, it has been a way of life for the majority of these countries and it is not one that we can introduce in this country and all of a sudden feel that it is going to be implemented equitably, especially during the time and for the reasons we are trying to apply it.

Senator SIMPSON. I hear that. But let me state a distinction that I hear. It seems to me that what is concerning you, let us put it under this broad base of discrimination that we all would define differently, I suppose.

Is your major concern that you are going to be refused a job because the employer is afraid of sanctions, or is it that you are going to be asked for a card when someone else is not? I keep hearing that coming up more than the other thing about jobs and hiring, and seeing that your people are provided for and are able to work and be productive.

I hear more and more of a slipping away to the issue of, "If nobody else is going to be asked for that card, we do not want to be asked for that card." It seems we slip away from——

Mr. HUERTA. I had understood your question to go to civil liberties questions in terms of how could it become broader in terms of use. I made that point, and then understood Arnold to build on that, showing how the use of the card could be abused.

But his original point, for example was, in your system if you are not asking, "How many job applications were made, and how many of them showed you whether they had the card or not," you do not get at the problem of employment discrimination for our community which is, there may be an antialien backlash attached to this, and there may be employers that say just generally for Hispanics when they apply, "I am going to discount them," some out of prejudice—hopefully just a minority; others out of a good-faith attempt to comply with the law. They just are not going to take any chance.

They will ask the Anglo that they decide to hire, "Give me your number," and the Anglo will report it, and he will not run afoul of the law. But it is at that particular junction the system that we are afraid there will be discrimination. As we know it now, you can define discrimination differently, but nevertheless, the opportunity is created by this mechanism.

Senator **Simpson**. You stated, Arnold, that your community, that you represent so ably, would have to carry their cards during working hours in order to contend with possible and probable employment raids by the INS. How would the voluntary use of the card in that way differ from the existing situation except that it would be easier for everyone to prove their work authorization?

Mr. **Torres**. But you see, then you have begun to use the card for another purpose. In other words, you have expanded on the original intent which was merely to show that you could work.

In other words, that card is not supposed to show whether you are a citizen or anything else.

Senator **Simpson**. That is right.

Mr. **Torres**. But you see, when the INS comes in they are not going to ask you whether you can work, they are going to ask you, "Are you a citizen?" So, all of a sudden the card turns on new purposes. That is the concern that we have not only from a civil libertarian perspective but in a practical sense of just outright discrimination.

I would apologize, if need be, for not clarifying enough our concern about the discrimination. We do not want to hem and haw on the fact that we are going to be asked over somebody else, but I do want to rely simply on that point that when we had our national convention we had the privilege of having Mr. Conner and other people in Washington, D.C., travel there.

On that occasion, as well on the occasion when Attorney General Civiletti and a member of your subcommittee, Mr. DeConcini, addressed our national convention in Washington, D.C., they both said, "We are thinking about an ID card. We do not know if it is going to be there, but we are thinking."

They were absolutely blasted, and they were our friends, and they still are our friends. But it is the idea of asking people to show that they are citizens of this country. I think that is a very important point to make because you originally said at the beginning of this hearing that the public has never allowed itself to be abused or pushed around too much. You said that, "I doubt that it will happen on this occasion."

Well, the unfortunate situation there is that the public that is in agreement with the card is not going to be the target of who is going to be enforced to make sure that they have that card.

So, I am absolutely positive and I agree 100 percent with that comment that the public, and specifically that public that is not going to be asked about their legal status in this country will not have a problem. If they do, they are going to make sure they are not going to be pushed around.

But it is going to be our community that is going to be put in that unfortunate situation.

Senator SIMPSON. And it is going to be your community that is going to suffer the most if we go back to business as usual with our immigration and refugee policies.

That is what I want to prevent. We do not want to go back to the old game which did a number on the Germans, then the Chinese. Now you are going to be the selected ones for the next immigration and refugee policy reform. That is what we must avoid. That is why it is so important to have your data, your information, your feelings, your beliefs.

But somewhere, somehow it must get specific so that it can get into the legislation specifically. That is the critical thing. That is what I am going to continue to direct.

Just one final question because we have another panel waiting. This is a provocative one for me.

In discussing a work eligibility card system the Select Commission came up with an enforcement mechanism which would entail investigation, checking the employer's files first and then, only if something is awry, would they then go to individuals.

Now, obviously we have not even suggested that workers be required to carry the card on their person at all times, that would be offensive, is offensive. We are talking about it being presented at new hire opportunities.

But here is mine, try this. Opponents of employer sanctions and ID systems always advocate that the only way to go is to increase enforcement. That is their out. When you oppose employer sanctions and ID systems, then you go to increased existing enforcement methods.

It seems to me that current interior enforcement and the way it is being performed, INS area control, would be more conducive to investigations which will single out foreign-looking, or foreign-sounding persons much more—much, much more—than any of the proposed reforms.

Now, what is your comment on that?

Mr. HUERTA. Well, our interest is in protecting the Chicano population, the Mexican-American, the Latino population present in the United States. It is not our goal to get more undocumented into the United States. It is not our goal to have a large undocumented population in the United States. That is why we are advocating such things as a legalization program and stricter border enforcement, and better services by INS.

We happen to think that those raids that they are conducting at the work place in the manner described by the gentleman from the garment industry are absolutely illegal. There happens to be an injunction in effect against the INS right now in Los Angeles in a case called Zurick versus the INS, in which a Federal district court judge issued that injunction. That case is currently pending before the Ninth Circuit.

Those raids are illegal. They are still continuing to happen in which the INS is in contempt of that Federal district court order currently to discontinue that activity.

Your proposal is less disruptive in the abstract, but the problem is when the employer has these additional burdens that we fear—and I will use the word "fear" rather than "concern"—is that there will be less hiring of Latinos in these jobs because employers will just not want to have INS targeting their particular company for INS investigators to come looking around. They may find other types of violations other than immigration violations. It is much easier if they just clean out anyone that looks foreign, and that is the fear.

Senator **SIMPSON**. I hear it.

Thank you very much. You will be appearing before us in other issues that are of critical importance to your community. Thank you very much.

Mr. **HUERTA**. Thank you.

Senator **SIMPSON**. And get it earlier to us the next time.

Mr. **TORRES**. I will close next time.

Senator **SIMPSON**. Close?

Mr. **TORRES**. I will close the statement the next time.

Senator **SIMPSON**. If the next panel will come forward, please. John Shattuck of the American Civil Liberties Union; Paul McCleary, executive director of the Church World Service on behalf of Citizens' Committee for Immigration Reform; and Ray Marshal, who served with me on the Select Commission and a man I came to have great regard for, the former Secretary of Labor and a member of the Select Commission, representing the Economic Policy Council of the United Association of the U.S., with Dr. Silvia Hewlett, executive director.

Let us start with Mr. Shattuck, then Mr. McCleary, and then Ray Marshal. Please, Mr. Shattuck?

STATEMENT OF JOHN H. F. SHATTUCK, NATIONAL LEGISLATIVE DIRECTOR, AMERICAN CIVIL LIBERTIES UNION, ACCOMPANIED BY WADE J. HENDERSON, LEGISLATIVE COUNSEL

Mr. **SHATTUCK**. Thank you very much, Mr. Chairman. We are pleased to appear before you once again on an issue of importance to my organization and to the entire country.

I would just like to point out that I am accompanied by Wade Henderson who is the legislative counsel of the American Civil Liberties Union. I am the legislative director of the ACLU and, perhaps pertinent to this hearing, I am the author of a textbook, "Rights of Privacy," published in 1977.

We have submitted a lengthy statement which of course we will not read or even summarize, but I hope that it can be introduced into the record.

Senator **SIMPSON**. Without objection.

Mr. **SHATTUCK**. Thank you.

I would like to spend my 5 or 6 minutes discussing what I see as three essentially different kinds of work authorization systems that might be used to try to enforce a prohibition against the employment of illegal aliens. Each of them raises a somewhat different constitutional issue, and I would like to discuss them in turn.

First, a work authorization system which is based entirely on existing documentation—such as a driver's license or a social security card, or a voter registration card, or some other existing form of identification—this system has the virtue of being simple and economical, but the flaw—as many witnesses have pointed out—of placing the burden on employers to insure that they are not hiring illegal aliens.

Since there is no effective way for an employer to determine in a system like this whether a driver's license or a social security card has been forged or stolen, or is otherwise accurate, this system creates in our view a tremendous disincentive for employers to hire anyone who might be an illegal alien.

What this boils down to in practice is a system which encourages employment discrimination against racial or ethnic minorities who might look foreign, and it raises in constitutional terms serious equal protection questions and would very likely result in substantial claims of illegal employment discrimination under title 7 of the Civil Rights Act of 1964.

The second work authorization system that I would like to briefly discuss and point out some of the constitutional questions involved, is a system based on a centralized data bank of information to verify the identities of authorized workers.

This system, as I understand it, would be designed to remove the burden from employers of judging whether a worker is or is not an illegal alien and to objectify the system. It has the virtue of curtailing the incentive employers would have to discriminate against foreign-looking minorities in order to avoid the risk of being caught for hiring illegal aliens. But it has the major flaw of conditioning the right to work on a person's willingness to give up certain aspects of the right to privacy.

For the system to work, workers would be required to provide enough personally identifying information to enable the data bank to serve as a reliable means of verifying employment eligibility.

This worker registration system raises some constitutional questions. In fact, the Federal courts—as you may be aware Mr. Chairman—are beginning to address these questions because similar work registration schemes have been adopted and challenged in several parts of the country.

In one recent case which I would like to bring to the attention of the subcommittee, the U.S. Court of Appeals for the Fifth Circuit last year struck down as unconstitutional a Louisiana workers registration ordinance. The case is *Service Machine and Ship-Building Corporation* v. *Edwards*—and I will provide a copy of the decision to the committee for inclusion in the record.

The ordinance in question required anyone who sought new employment in a Louisiana county to fill out a form providing information about their race, sex, social security number, current and recent addresses, and parents' identity.

The ordinance was purportedly adopted in order to identify people who were itinerant workers who might be wanted for some criminal behavior elsewhere.

The information was then checked in a central data bank to determine if the person was wanted for any crimes or otherwise disqualified from obtaining employment in that particular county.

Testimony in the case showed that large numbers of people who were qualified for employment were deterred from seeking it because of the registration system, and the system was challenged on constitutional grounds as a burden on, first, the right to work and change jobs; second the constitutional right to travel and third, the right to privacy, and rights secured under the Commerce Clause.

Now, the Fifth Circuit invalidated the ordinance as unconstitutional, and the Supreme Court a year ago affirmed the Circuit Court decision.

Although the court did not address all the constitutional arguments made against the registration system, it rejected none of those arguments.

Just another minute or two, Mr. Chairman, and I will conclude. I see the light is on.

Beyond the immediate question of the constitutionality of an identification system based on this kind of a data bank there is the question of how the system would be used once it is set up.

As we point out in our prepared testimony, many large personal data systems over the last 10 years have been put to uses other than those for which they were originally intended. On pages 16 and 17 of our statement we list many examples, such as the use of arrest records by private employers. These examples show how a work authorization system based on a centralized information bank is very likely to become an all-purpose population registry.

A data bank already used to determine eligibility for employment on grounds of citizenship could easily be adapted to implement existing laws restricting the employment of convicted felons for certain kinds of jobs. That is the example that we have in the Louisiana case. I will not go through many of the examples that we have cited in the testimony, but they are there.

These are all reasonable uses of a work authorization system, but cumulatively they raise the serious concern that the system could be used to control the employment opportunities and trace the movements of hundreds of millions of people.

Briefly, the third system which I will simply mention—I see my time is up—is a system which is a variation of the second, and that is a data bank system with a secure identification card added to it.

Here, we have the same constitutional issues presented with perhaps an additional issue which is that when there is a work authorization card there is always the danger that was being described by the previous panel, that the enforcement of the immigration laws and the efforts to determine where illegal aliens may be, will involve investigative priorities that will focus on minorities, in terms of the effort to determine who is carrying such a card, whether they have the authorized card.

This, once again, gets us back to the discrimination issue. These, then, briefly are the three major systems which you asked me to address in the testimony today. Obviously, I am prepared to answer any questions.

Senator **Simpson**. We will indeed. Thank you, Mr. Shattuck.

[The prepared statement of John Shattuck follows:]

PREPARED STATEMENT OF JOHN H. F. SHATTUCK

Mr. Chairman and Members of the Subcommittee:

We are pleased to appear before you to offer the comments of the American Civil Liberties Union on work authorization systems and immigration policy. The ACLU is a nationwide, non-partisan organization of 250,000 members whose sole purpose is protection of individual rights and freedoms under our Constitution.

With the release in March 1981 of the report and recommendations of the Select Commission on Immigration and Refugee Policy, Congress and the Reagan Administration are turning their attention to proposals for remedies to the problem of "undocumented aliens". One proposal under consideration is a statutory ban on the employment of "illegal aliens," combined with an identification system for distinguishing persons eligible for employment from those who are in the United States illegally or whose entry documents do not permit them to work.

As we have previously testified before this Subcommittee, the ACLU National Board of Directors has adopted the following position on this proposal:

> "Employment of Undocumented Aliens
>
> The ACLU remains opposed to legislation which penalizes employers for hiring aliens unlawfully in the United States. We believe that such legislation would exacerbate existing patterns of racial and ethnic discrimination in employment, by creating greater risks for employers hiring applicants whom they believe to be aliens. . . .
>
> The ACLU also opposes the use of Social Security cards and other governmentally-issued documents as a condition of employment. Such a practice, in effect, creates an "employment passport," which results in a universal identifier of all persons in the United States. [Board Minutes, June 18-19, 1977]"

Economic Deterrents to Employment of Undocumented Aliens

The creation of economic deterrents to the employment of illegal aliens is not a new idea. Over the past ten years, there have been at least five major Congressional proposals making it unlawful for an employer knowingly to hire any alien not legally admitted to the United States with permission to work.[1] Each of these would have required that an employer take measures to assure that job applicants had proper documentation.

One recurrent objection to these proposals, which we share, has been that they would exacerbate existing widespread discrimination against minorities, in that penalizing employers for hiring illegal aliens would only make them reluctant to employ anyone with a foreign accent, name, or appearance -- in practice, members of the very racial and ethnic minorities that already suffer a heavy burden of employment discrimination. According to this argument, the law-abiding employer would prefer to avoid the trouble and expense of trying to verify a "suspect" applicant's eligibility to work simply be refusing to hire anyone whose appearance suggests that he or she might be an illegal alien. At the same time, the less scrupulous employer would continue to hire undocumented aliens and, because of the difficulties of enforcing such a law, run little risk of detection and penalty.

The Select Commission on Immigration and Refugee Policy and the Reagan Administration have now recommended federal legislation making it illegal for employers to hire undocumented workers.[2] On the issue of the employment discrimination that would be likely to result from such legislation, the Commission said:

> ...[A]n effective employer sanctions system must rely on a reliable means of verifying employment eligibility. Lacking a dependable mechanism for determining a potential employee's eligibility, employers would have to use their discretion.... The Select Commission does not favor the imposition of so substantial a burden on employers and fears widespread discrimination against those U.S. citizens and aliens who are authorized to work and who might look or sound foreign to a prospective employer. Most commissioners, therefore, support a means of verifying employee eligibility that will allow employers to confidently and easily hire those persons who may legally accept employment. Without some means of identifying those persons who are entitled to work in the United States, the best-intentioned employer would be reluctant to hire anyone about whose legal status he/she has doubts.[3]

Some of the Commissioners felt that the fairest and most effective system of eligibility verification would be one that applied to the entire work force; others characterized this view as "overreaction," and thought that a more narrowly drawn requirement would suffice.[4] No single proposal achieved a consensus, and the Commission agreed only "on the principles that should underlie a verification system: reliability, protection of civil rights and civil liberties and cost-effectiveness."[5]

It is the ACLU's belief that these goals are incompatible. Any form of verification sufficiently reliable to support a fair system of employer sanctions is unlikely to be cost-effective, and most certainly will pose a grave danger to civil rights and civil liberties.

Every system of verification that has been considered for this purpose rests ultimately on the creation of a reliable mechanism for personal identification and a link between identification and eligibility for employment. One suggested approach would use a counterfeit-resistent identity document, possibly an improved version of the Social Security card. Presumably, such a document would contain the bearer's photograph, signature, perhaps other identifying data, and a code indicating the bearer's citizen or alien status -- all verified by information in government databanks. It would have to be physically tamper-proof, for example, manufactured of materials that would shatter if an attempt were made to substitute another photograph or alter any of the data. Employers would be required to check the cards of all new applicants and to record their numbers.

A different method would dispense with the need for an identity document, relying instead on a government databank of eligible workers. The employer would submit forms on each new employee, to be screened by government officials against records in the databank, or, in a technologically more sophisticated version, ascertain applicants' eligibility by telephoning the databank.

How would these systems threaten the right of privacy? First, in the case of an identity document, by creating a domestic passport implementing the government's already broad police power to stop, question, and search. Second, by creating what amounts to a national population registry, a government databank through which every individual's personal identity is established and validated. Third, through the certainty that this databank will eventually be used to further other important public programs and policies unrelated to immigration, and thereby become both an enormous repository of personal information and a means for tracking and controlling the lives of American citizens. And fourth, through the use of the Social Security number, by establishing a universal identifier that facilitates the matching and exchange of data among many different governmental and private record systems.

These are not merely projections of remote possibilities. Existing laws and record-keeping practices have already brought us perilously close to each of these eventualities. The institution of an employment eligibility system could very well be the final step toward their realization.

Work Identity Cards and Illegal Discrimination

Under a system of sanctions for hiring undocumented workers, an identity document would function as a kind of "employment passport." In order to hire workers, employers would rely upon the card or whatever document is used for this purpose to ascertain their applicants' personal identity and legal right to work in the United States.

In this very limited context, a so-called employment passport may not seem particularly threatening. However, we believe that such a document would quickly cease to be merely a passport to employment, and become the domestic or internal passport which is the hallmark of so many modern police states.

Certainly no one intends this result, and proponents of the identity card believe that they can take steps to prevent it. What they may not fully realize, however, is that the government's police powers to stop and search are already sufficient to transform the identity document into a major threat to privacy, freedom of movement and equal protection of the laws.

A look at some Supreme Court decisions over the last decade will illustrate the point. In two 1973 decisions, the Court ruled that an officer arresting a motorist for driving without a license or with a revoked license may search both the motorist and the vehicle. U.S. v. Robinson, 414 U.S. 218; Gustafson v. Florida, 414 U.S. 260. In both cases the search was precipitated by the motorist's failure to carry a valid document. Although six years later the Court struck down random spot checks of driver's licenses and registrations, Delaware v. Prouse, 440 U.S. 648 (1979), it distinguished such searches from those conducted at U.S. borders or at specific checkpoints within the country. The Court has sustained document inspections at border checkpoints and their "functional equivalents," Almeidia-Sanchez v. U.S., 413 U.S. 266 (1973), U.S. v. Martinez-Fuerte, 428 U.S. 543 (1976), and stops by roving patrols for "reasonable suspicion" based on the physical appearance of the occupants of a car, U.S. v. Brignoni-Ponce, 422 U.S. 873 (1975).

In U.S. v. Mendenhall, 48 U.S.L.W. 4575 (May 27, 1980), the Court upheld the constitutionality of a stop and request for identification by drug agents at an airport, on the grounds that the woman had not been "seized" because she could have walked away at any time. The Court distinguished this situation from its invalidation of a stop in an earlier case, Brown v. Texas, 443 U.S. 47 (1979), in which police had stopped a man in a high drug problem area, requested identification, and were refused -- a crime under Texas law. The distinction drawn by the Court was that in Brown the individual had been "seized," in that he was detained, however briefly, and was not free to walk away.

In these cases and others in the lower courts, the police power has been defined as allowing government agents to stop individuals without any particular suspicion of a crime, to request identification, and to search, detain, or arrest people who cannot produce proper documents. Just how far this can be carried is dramatized by the recent case of a New Jersey woman who was stopped for a traffic violation, arrested for driving without her registration and insurance documents, and strip-searched in a cell at the police station.[6]

The Supreme Court decisions just described are directly pertinent to the proposal for a work identity card. Unlike a driver's license system, a work identity card system would be enforced by focusing attention primarily on racial and ethnic minorities who may appear to be illegal aliens. Under Brignoni-Ponce, the appearance of being an alien in a place where aliens are likely to be found is enough to justify a stop and interrogation. Many blacks, hispanics, orientals, and other "foreign-looking" citizens and resident aliens might find it necessary to carry their identity cards all the time, even if there was no law that required it.

The investigative priorities that are likely to be followed to enforce a work authorization system will have the effect of discouraging employers from hiring minority workers. Because enforcement is likely to be focused on racial or ethnic minorities in the workplace, employers will have a strong disincentive to hire minority workers.

To protect themselves against inadvertantly hiring an undocumented worker, even employers who do not intend to discriminate will scrutinize the identification papers of members of minority groups much more closely than the documents of non-minority workers. In doubtful cases employers will accept a non-minority worker's explanation about changes in appearance or other irregularities in his or her documents, but not similar explanations by minority workers. Even in cases that are not truly doubtful, employers who want to discriminate can defend their actions by claiming that they believed the minority worker to be undocumented.

The proposed work authorization system, therefore, will encourage employers, regardless of their intentions, to discriminate against minority job applicants and workers. This likelihood will be enhanced by the increasing withdrawal of the federal government from vigorous civil rights enforcement, exemplified by the proposed changes in Justice Department policy on affirmative action litigation, changes in the regulations governing the office of Federal Contract Compliance, and the development of judicially mandated "intent" rather than "effects" tests for proving illegal discrimination.

Creating a Population Registry

With or without an identity card, a system designed to allow employers and the government to determine who is eligible to work in the United States will require the establishment of a databank listing the entire United States labor force -- initially, at least 100 million people. That databank will grow year by year to encompass every active, prospective, and retired worker, becoming a cumulative registry of the nation's population.

If such a databank is truly to serve as a reliable means of checking both identification and employment eligibility, it must contain current, verified personal information on each data subject. In addition to the Social Security number and other items commonly used to establish identity (date and place of birth, sex, former names, parents' names), this information would probably include a physical description such as height, coloring, and race, perhaps some unique identifier such as a signature or photograph or even fingerprints, and of course a notation of status as a citizen or alien with permission to work.

The databank is the foundation of a system of sanctions against employers who hire "illegal aliens." While a databank could function without an identity card, ultimately an identity card would prove unsatisfactory without the databank. Counterfeit and fraudulently obtained documents are already used by "illegal aliens" not only to obtain employment and in various other governmental and private transactions, but often to get into the United States in the first place.[7] A supposedly "secure" Social Security card or identity document would not be impervious to fraud, counterfeiting, and tampering on the basis of its physical properties alone, for the technology that makes such a docuemnt possible is available outside as well as within the government.[8] Moreover, valid identity documents would presumably continue to be issed on the basis of forged, stolen, altered, or fraudulently obtained "breeder" documents (birth certificates, driver's licenses, green cards, baptismal and school records, etc.), which are responsible for much of the false and fraudulent identification now in circulation.[9] It has even been suggested that a Social Security card or identity document which is reputed to be counterfeit-proof and tamper-proof might actually foster the use of fraudulent identification, especially if the possession of such a document is required by law as proof of the right to live and work in this country.[10] The price of black-market documents would certainly increase, but so too might their use.

The need for a national population registry as the foundation for a "secure" identity document is commonly acknowledged. The HEW Advisory Committee on Automated Personal Data Systems ventured that prediction in 1973.[11] So did the Privacy Protection Study Commission in 1977,[12] and the U.S. Commission on Civil Rights three years later.[13] Reports by the Federal Advisory Committee on False Identification and the Domestic Council

Committee on Illegal Aliens in 1976, and by the General Accounting Office in 1980, all emphasized the great difficulty, if not impossibility, of creating a foolproof identification system for immigration policy purposes without a separately maintained database for verification of documents.[14] Most recently, the staff of the Select Commission on Immigration and Refugee Policy pointed out that all of the identification systems proposed to implement sanctions against employers would create a new governmental database,[15] which would be in effect a national registry.

In a sense, the government has already tried to create something like a population registry by using the files of the Social Security Administration as a kind of master list of eligible workers. Since 1972, applicants for Social Security numbers have had to submit documentary evidence of citizenship or alien status, and the SSA has notified the Immigration and Naturalization Service whenever earnings are reported for Social Security numbers issued to aliens who are not authorized to work. But these efforts have not been particularly fruitful, in part because the SSA's records and procedures are not designed with the primary purpose of establishing and verifying personal identity.[16] In contrast, that would be precisely the purpose of a real population registry. Nonetheless, even the ineffectual efforts of the Social Security Administration demonstrate that a central database or population registry is recognized as essential to any ban on the employment of undocumented workers. Without a reliable database, there can be no workable scheme of sanctions against offending employers.

On purely practical grounds, the implications of a population registry are disturbing. If it is true that the issuance of supposedly tamper-proof, counterfeit-proof identity documents might eventually only further encourage the criminal uses of false identification, one can imagine the magnitude of a successful conspiracy involving the registry itself. Moreover, the costs of a registry could be staggering: one can read estimates from $5-10 million up to $100 million for development of the registry and from $1-2 million up to $230 million annually for its operation,[17] and from $100-400 million up to $850 million for the issuance of new counterfeit-resistent Social Security cards or identity documents[18] -- a range so broad as to signify that no one has the remotest idea what the system would cost. Nor can one compute the costs to employers and workers of delays and errors in processing eligibility checks, or the calamitous consequences to a needy worker who is erroneously identified. In fact, looking at the costs, errors, delays, and frustrations of large computerized data systems already in existence, we must ask whether we have the capacity to operate a system which would demand such accuracy and speed, perform so many daily transactions, and keep so much detailed information reliably up-to-date.

We must also ask whether the American people really want a population registry, even in the unlikely event that it might contribute to some appreciable improvement in the "illegal alien problem." For an answer, it is helpful to examine how the registry could be used to document, track, and circumscribe the lives of American citizens.

Uses of a Population Registry

Former Secretary of Labor Ray Marshall, a member of the Select Commission on Immigration and Refugee Policy, stated that he favors a "stringently safeguarded" databank to which employers could submit identifying information on job applicants to verify their identity.[19] Although he did not elaborate on what he meant by "stringent safeguards," presumably, like other proponents of such a databank, he would strictly limit its uses to the original purpose of establishing eligibility for employment by reason of citizenship or alien status.

The HEW Advisory Committee on Automated Personal Data Systems cautioned nearly a decade ago that a population registry would develop into a national dossier system.[20] Subsequent events proved the Committee's judgment correct, but by a roundabout means. While we do not have anything that looks quite like the National Data Center that was being proposed by computer enthusiasts in the mid-1960's, the history of automated data systems since that time shows clearly

(1) that large personal data systems are nearly always adapted to purposes other than their originally intended limited uses, and

(2) that techniques for the electronic matching and pooling of data in separate systems have created many of the characteristics, if not the physical actuality, of a national dossier system.

One might list, almost at random, dozens of examples of new uses for once-restricted data systems, and of exchanges and matches of once-separate data systems:

* As mentioned earlier, Social Security Administration files are used to identify "illegal aliens."
* The Parent Locator Service, established pursuant to Title IV-D of the Social Security Act, allows child support enforcement officials to search "confidential" governmental and private record systems in order to trace absent parents who owe child support.
* Numerous state laws allow or actually require public and private employers to query criminal history databanks, compiled originally for police use, in order to screen out applicants convicted of certain crimes, or simply to ascertain if applicants have arrest records.
* Internal Revenue Service records can be checked by government attorneys to screen prospective jurors.

- The Veterans Administration and the Department of Health, Education and Welfare have matched their records against federal payrolls to find VA and student loan defaulters.

- The records of hundreds of federal and state public assistance programs have been matched against each other and against public and private employment rolls, to identify people receiving multiple benefits or benefits for which they are ineligible because of their earnings. Some states, such as New York and California, have even set up special wage reporting systems to make data on earnings more easily available for inter-agency matches.

- In many states, detailed case records from publicly funded services such as mental health clinics, family planning programs, and services for handicapped children have been pooled in comprehensive "human services" or "family services" databanks, where they are used for a variety of purposes from fraud control to eligibility determinations to case management review.

- Banks are required by law to preserve their customers' records much longer than they are needed solely in order to assure their availability for government investigations.

- In the future, we may see the implementation of current proposals for giving data from government records to credit reporting agencies in order to help the government recoup bad debts, for compiling Selective Service lists from Social Security and Internal Revenue Service records, and for pooling information on all federal assistance recipients into a single national benefits recipients databank.

Such examples as these do not constitute a "parade of horribles": it is not necessary to cite abuses like the violation of Census Bureau confidentiality during World War II to help the War Department find Japanese-Americans, or the political manipulations of tax and other government records that were exposed during Watergate. Many of these expanded uses are for purposes that most people would find at least rational, perhaps commendable. They demonstrate that personal data systems are useful for a wide variety of purposes beyond their originally intended parameters, and that such systems will, inevitably, be adapted to new purposes in accordance with developments and changes in public policy.

There is no reason to believe that a population registry would not follow the same course. For example, a databank already used to determine eligibility for employment on grounds of citizenship or alien status could easily be adapted to implement existing laws restricting the employment of convicted felons for certain kinds of jobs; such convictions could simply be coded into the system's database. The databank could also be useful in efforts to combat welfare fraud. If the database were expanded to include a notation of status as a welfare recipient, then the databank could automatically report the hiring of such persons to the appropriate welfare agency as a signal for cutting off benefits, and matches of the databank against various public assistance program rolls would simplify the identification of ineligible welfare recipients. If the registry contained identifiers such as photographs or fingerprints, it could be useful in apprehending criminal fugitives. It could also be an invaluable asset to the Parent Locator Service.

In time, the registry itself might be expanded to include new data subjects, such as children. There has been recurrent controversy over the enrollment of the children of "illegal aliens" in public schools; a challenge to a Texas statute barring free public education for such children is pending now before the Supreme Court.[21] A population registry could verify the identity of the children of citizens and resident aliens, allowing the public schools to check the eligibility of students when they enroll. The registry could also help prevent welfare fraud schemes for collecting benefits for fictitious children. It is not unreasonable to forecast a population registry in which children would be enrolled at birth.

Through these and similar adaptations, a national population registry would unquestionably become, as the HEW Advisory Committee predicted, a national dossier system. Whether the registry itself contained complete personal dossiers, or created such dossiers through matches with other systems, the effect would resemble the picture described by the head of a Congressional Committee which, fifteen years ago, examined the prospect of "The Computerized Man":[22]

> ...[A person's] life, his talent and his earning capacity would be reduced to a tape with very few alternatives available....
>
> Nor do we wish to see a composite picture of an individual recorded in a single informational warehouse, where the touch of a button would assemble all the government information about the person since his birth....
>
> The presence of these records in government files is frightening enough, but the thought of them neatly bundled together into one compact package is appalling....
>
> We are told that the computer can be programmed to program out derogatory and confidential information; what we fear is the ability to program it in.

Time and a greater familiarity with computerized data systems have not made the public any more sanguine about the effects of massive governmental databanks upon their individual rights and freedom. A Harris Poll published in 1979 showed that one of every three Americans believed that our society already resembled the "1984 Syndrome."[23] As a nation, we still fear what the HEW Advisory Committee described as the cradle-to-grave dossier, which would allow the government to trace, monitor, and control each individual. "American culture is rich," said the Committee, "in the belief that an individual can pull up stakes and make a fresh start, but a universally identified man might become a prisoner of his recorded past."[24]

Discussions of a population registry often focus on the potential for dramatic abuses: manipulations by corrupt or authoritarian officials to punish their political enemies or to oppress society's weakest and most disadvantaged members. We do not think it necessary to go this far to demonstrate the dangers of such a system. Rather, we think that more attention should be given to the tremendous attraction that a databank of reliable personal identification would hold for the implementation of public policy in many areas, and to the inevitability that such a databank, initially intended to do no more than verify the personal identity and eligibility of workers, would become a full-blown dossier system.

Still, the likelihood of more blatant abuses cannot be ignored, unless we simply shut our eyes to recent history. For example, employers often want to know if their applicants have histories of mental illness, heavy debt, drug or alcohol abuse, epilepsy, heart disease, cancer, or other characteristics that might in some way indicate a "bad risk": why not code databank files with a complete description of each person's disabilities? We have a precedent, in the secret coding of military discharge papers in such a way that employers could identify ex-servicemen branded by the government as "crazies," "troublemakers," or "perverts." With the growing backlash against homosexuals, it is not far-fetched to speculate that files might be coded to show sexual preference, on the rationale that homosexuals ought not be hired as school teachers or camp counselors.

Political dissenters might be prime targets for special attention. One need not look so far back as the McCarthy blacklists to find examples. The COINTELPRO operations of the FBI in the 1960's and '70's illustrate that the government has gone to great lengths to undermine political causes like the civil rights and anti-war movements by discrediting their leaders, among other means, by making it difficult for them to find employment. There is every reason to think that similar episodes will be repeated -- or at least attempted -- in the future. The omens are visible even now, for example, in the so-called "Blitz Amendment" approved last winter by the Senate, which would have denied federally funded job training under CETA to anyone publicly advocating the violent overthrow of the government within the past five years. If some similar political bar to employment should ever become law, political codes could be a routine entry into an employment eligibility databank. Even without legislation, a resurgence of COINTELPRO-type operations in an increasingly intolerant political atmosphere could result in the use of secret codes to "mark" dissenters.

Nationality and ancestry might be another focus of interest. When the government tried to round up all the Iranian students in America during the hostage crisis, it was hampered because Immigration and Naturalization Service records could not pinpoint their exact locations. The likelihood of other such crises in the future, along with growing fears of international terrorism, might be a rationale for expanding the database to include all aliens, whether or not they are employed, and to code the files of citizens as well as aliens for national origin or ancestry. Nationality codes in a population registry would have been useful when the Japanese-Americans were rounded up in the 1940's; they might prove useful again if the government decides to keep track of the potential "sympathizers" of America's adversaries in a diplomatic crisis or war.

Because employment -- or the inability to obtain it -- are central factors in determining a person's quality of life, a dossier system that can so easily be used to control the employment opportunities and trace the movements of hundreds of millions of people may be the most powerful tool for social control that any government has ever devised. Neither good intentions nor supposedly "stringent safeguards" can, in the long run, prevent its perversion and abuse.

The Standard Universal Identifier

It is too late to argue that the Social Security number should not be used as the standard universal identifier. At least as far as governmental record-keeping is concerned, the SSN is already a universal identifier. There is scarcely a state or federal personal data system that does not use the SSN, from tax and welfare agencies to schools, libraries, and licensing authorities. In addition, records of many private transactions, particularly those involving bank accounts and securities that have tax implications, are required by law to use the SSN.

In 1973 the HEW Advisory Committee warned that the SSN, though not a standard universal identifier in the strictest technical sense, could become so for all practical purposes simply by being used as one. It also noted that the federal government itself was largely responsible for the expanding use of the SSN as a universal identifier.[25]

The HEW Committee examined the reasons that made people fear the standard universal identifier, despite its practical advantages for record management. It predicted that "[t]he bureaucratic apparatus needed to assign and administer an SUI [standard universal identifier] would represent another imposition of government control on an already heavily burdened citizenry." It would lead to a system of mandatory personal identity cards: "Loss or theft of an SUI card would cause serious inconvenience, and the mere threat of official confiscation would be a powerful weapon of intimidation." It would create a national dossier system that "would make it much easier for an individual to be traced, and his behavior monitored and controlled, through the records maintained about him by a wide range of different institutions....A permanent SUI issued at birth could create an incentive for institutions to pool or link their records, thereby making it possible to bring a lifetime of information to bear on any decision about a given individual."[26]

For a time, the Committee's cautions were heeded. In the Privacy Act of 1974, Congress forbade new uses of the SSN in government programs unless Congress itself authorized them.[27] But very soon thereafter, Congress reopened the doors by authorizing the states to use the SSN for the administration of tax, welfare, driver's license, and motor vehicle registration laws, and for the Parent Locator Service.[28] While there have been a few challenges to new governmental uses of the SSN since then -- for example, a suit opposing use of the number for draft registration as a violation of the Privacy Act[29] -- it is clear that Congress will allow new uses that appear to enhance the accuracy and efficiency of data systems management. A databank to verify identification and employment eligibility would undoubtedly be authorized to use the SSN.

In the meantime, the Social Security Administration has taken steps to correct the SSN's deficiencies as a reliable standard identifier. In particular, it has implemented more stringent procedures for personal identification by applicants and attempted to eliminate the issuance of multiple numbers to a single individual.[30] But the SSA's efforts to create a more secure identification system are largely for the benefit of other governmental programs, a point the SSA emphasized when it noted that the benefits of issuing new tamper-resistent cards "would accrue only to other agencies because perpetrating fraud against the social security system by mere possession of a counterfeit or fraudulently obtained social security card is practically impossible."[31] By administering the standard identifier for a wide variety of governmental programs, the SSA has effectively become that "bureaucratic apparatus" described by the HEW Committee.

We have seen that the matching and linkage of separate record systems, as predicted by the HEW Committee, have become commonplace. It is true that records could be exchanged, matched, and linked without the SSN.[32] Nonetheless, the fact that so many systems share the same identifier has been a strong incentive to record-matching, and has encouraged what both the HEW Committee and the Privacy Protection Study Commission called a "drift" toward the universal identifier.[33] An identification and employment eligibility databank using the SSN would accelerate that "drift."

While the standard identifier and large-scale record-matching are accomplished facts in governmental data systems, we believe that a population registry using the SSN would foster two other developments foreseen by the HEW Committee: increased record-matching among private agencies and between public and private agencies, and ultimately the creation of a mandatory identification card.

As was mentioned earlier, banks and brokerage houses are required by law to obtain their customers' Social Security numbers. Employers of course must do so to report earnings to the Social Security System. Other private agencies and businesses are free under the law to use the SSN if they wish to. Many do. Among them are hospitals, insurance companies, credit reporting agencies, utilities, credit-card companies, check-cashing services, colleges, department stores, airlines, hotels, unions, charities, and even undertakers. The growing use of the SSN among private agencies coincides with a growing exchange of information and matching of records between public and private agencies, for instance, the example noted earlier of matches between private employer payrolls and the welfare rolls. A population registry will seek information from employers and other private agencies and in return will give them information. Such exchanges can only encourage universal use of the SSN as an identifier, which in turn will encourage further pooling of records. Eventually, the distinctions between public and private agency record systems -- faint as they are even now in some cases -- may disappear altogether.

Among current suggestions for implementing sanctions for hiring "illegal aliens" is the creation of a databank without an identity document. Some favor this approach because it appears to circumvent a major problem of discrimination that might arise from the use of cards, namely, that only people who look or sound as if they could be foreign would have to show their cards to prove their eligibility, while some employers might prefer to eliminate such applicants altogether in order to save themselves the trouble of determining whether the documents are genuine. A databank, it is argued, would prevent discrimination because all applicants would be screened by the government, and employers would have no discretion. (No one has explained, however, why it should be assumed that the government itself would not discriminate by subjecting minorities to special scrutiny and harassment.)

But in fact it is likely than an identity card would be introduced sooner or later. The very existence of a databank that purports to contain "foolproof" identification would create a demand for identity documents so that its benefits could be enjoyed by people engaged in all sorts of public and private transactions. (A current analogy is the "non-driver's license" issued by states for people who do not drive but want the benefits of a driver's license as ID.) People would be asked to show their cards when they apply for government assistance, cash a check, apply for a job, or open a department store charge account. Such identification would be in great demand as a substitute for the many unreliable forms of ID now in circulation.

An identity card with just a name, photo, and Social Security number would be useful in many daily transactions. But the card could be even more useful if it conveyed further information. For example, if the cards of welfare recipients were coded, they might be discouraged from applying for multiple benefits. If the cards of ex-felons were coded, they might be discouraged from applying for certain kinds of jobs. If the cards of people defaulting on government loans were coded, they might be discouraged from trying to take out new loans before paying off the old ones. Whereas information in the registry can be used to decide that a person is ineligible for a particular job or benefit, the same information on an identity card could deter people from applying in the first place. Such deterrence might save everyone time and trouble.

These examples may seem improbably now, but in the long run, if enough people would find them useful, they could very well become reality. And the technology is available to create a very sophisticated system of electronically coded cards and communications. After all, in supermarkets around the country old-fashioned printed price labels are being replaced by machine-readable black-stripe codes, and some customers are paying at the register with coded plastic cards that transfer money from their bank accounts directly into the supermarket's account. Such technology could create identity documents with machine-readable codes and allow direct electronic communication with a central dossier system.

The proliferation of uses of the SSN over the last fifteen or twenty years by both public and private data systems has facilitated the widespread exchange and pooling of personal data. But there are still many practical impediments to the creation of a standard universal identifier and a cradle-to-grave national dossier system. The establishment of a population registry to verify personal identification and employment eligibility, and of its concomitant, the "secure" identity document, will do much to remove those impediments, at incalculable cost to the privacy and civil liberties of our citizens.

Conclusion

In the debate over the privacy implications of immigration policy, perhaps the most important factor to bear in mind is that we are not writing on a clean slate.

In his seminal work Privacy and Freedom, published in 1967, Professor Alan Westin assessed the contemporary computer revolution and its potential effects on civil liberties:[34]

> ...[A]s philosophers remind us in a different context, knowledge is power. The issue of privacy raised by computerization is whether the increased collection and processing of information for diverse public and private purposes, if not carefully controlled, could lead to a sweeping power of surveillance by government over individual lives and organizational activity. As we are forced more and more each day to leave documentary fingerprints and footprints behind us, and as these are increasingly put into storage systems capable of computer retrieval, government may acquire a power-through-data position that armies of government investigators could not create in past eras.

Of course, by 1967 computerization both in government and in private business was far advanced and had already brought significant alterations in the life styles of Americans individually and collectively. But the Orwellian prospects of "1984" lay far in the future, and there seemed to be time and opportunity for the nation to make choices that would preserve traditional American freedoms against the incursions of technological change. And in fact many important steps were taken. Congress and the state legislatures, administrative agencies, the courts, and private business all have acted to create "information rights" -- the rights of individuals to learn who is keeping files on them, to examine and correct their files, and to find out how their files are used and who sees them. Legislation like the Privacy Act, the Fair Credit Reporting Act, and the Family Educational Rights and Privacy Act acknowledges the need for people to exercise some control over data that will be used to make decisions that can profoundly affect their lives.

But other aspects of national information policy have not received the same attention. In particular, we have failed to stem the consolidation of data through the exchange, linking, and matching of separate record systems, tapping by agencies into each other's systems, and step-by-step expansion of systems to serve new uses. These developments have been gradual, almost invisible, usually in implementation of public policies that many people support: governmental efficiency, reduction of fraud and waste, better delivery of services, law enforcement. But the process is now far advanced, and we are close to creating that "sweeping power of surveillance by government over individual lives" that Westin described, not deliberately, but as the increment of many expedient but short-sighted policy decisions.

That is why the present controversy over immigration policy takes on special importance. To establish a population registry and an identity document, or either of them alone, could prove the irreversible last step in the loss of personal privacy that all Americans have felt so acutely.

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Senator SIMPSON. Mr. McCleary, please.

STATEMENT OF PAUL McCLEARY, EXECUTIVE DIRECTOR, CHURCH WORLD SERVICE, ON BEHALF OF CITIZENS' COMMITTEE FOR IMMIGRATION REFORM

Mr. McCLEARY. Mr. Chairman, members of the panel, my name is Paul McCleary, and although I am here today representing the Citizens' Committee for Immigration Reform of which I am a member, I am the executive director of Church World Service, which is the relief, development and refugee arm of the National Council of Churches.

It should also be noted that my organization, Church World Service, wishes to associate itself with the testimony I am giving on behalf of the Citizens' Committee.

The committee, as you may know, is a bipartisan, national organization recently formed through the leadership of Father Ted Hesburgh, president of Notre Dame University, and a distinguished panel of cochairmen to promote a rational, just and humane immigration and refugee policy for the United States.

The history of our country has been marked by the consistent use of large numbers of foreign laborers to fill low-level, unskilled jobs to enhance economic growth. Since the second half of the 19th century, however, when the free flow of immigrants was subject to regulation, many foreign workers have entered the United States illegally.

Over the years, the U.S. Government has failed to enforce the laws banning illegal entry effectively and evenly and has perpetuated a "half-open door" policy—officially forbidding illegal entry while essentially condoning it through lax enforcement.

Now, in 1981, our Nation finds itself in the peculiar position of espousing respect for the law as a tenet of our society, while refusing to make enforcement of immigration laws a priority. In the absence of effective enforcement measures, the United States encourages the continued violation of immigration law and the existence of an under class lacking effective protection under U.S. laws.

My committee understands this problem and we strongly recommend increased resources and additional personnel for Immigration Service enforcement efforts along the border and in the interior of our country. But we fully recognize that even a substantially improved enforcement effort will not substantially curb illegal immigration so long as legal employment opportunites exist in the United States.

In the last few years, even though there have been modest successes through INS interior enforcement efforts and by the Department of Labor's Wage and Hour Division, it has been impossible to stop expanding flows of undocumented illegal aliens and their employment in agricultural, service, and other relatively low-wage industries, as well as in construction and light manufacturing.

In preparing its report to the President and the Congress earlier this year, the Select Commission on Immigration and Refugee Policy—on which the distinguished chairman of the subcommittee served—was so convinced of the necessity of curtailing the flow of undocumented workers that 14 of 16 Commission members urged the passage of legislation making it illegal for U.S. employers to hire aliens not authorized to work in the United States.

A majority of Commission members went even further. Thirteen of them called for employer sanctions legislation based on a reliable system of identification for all workers. The reasoning behind this approach was that such a system of identifying employees eligible to work was essential in order to protect the rights of employers and employees alike.

Without a dependable mechanism for determining a potential employee's eligibility, employers would have to use their own discretion in determining eligibility to work. Commissioners felt that this would place a substantial burden on employers and could potentially cause widespread discrimination against those U.S. citizens and aliens authorized to work who might appear or sound foreign.

The Citizens' Committee for Immigration Reform strongly endorses the use of a reliable, secure and nondiscriminatory worker identification system in conjunction with sanctions against employers who knowingly hire undocumented aliens. As Father Hesburgh has said on numerous occasions, "Without a simple means to identify who is qualified to work in this country and who is not, sanctions against employers hiring illegal aliens cannot be enforced and illegal immigration will continue unabated."

Our committee holds the view that the entire work force in the United States should bear the same responsibility to verify employment eligibility.

To be nondiscriminatory, any system must apply equally to all members of the work force, U.S. citizens and permanent resident aliens alike. Unless such requirements are uniform, the potential for discrimination against certain employees who are foreign in speech or appearance could be great. Further, to burden one group of eligible workers with a requirement to establish eligibility while exempting another eligible group, would be discriminating in itself.

We believe that a universal identification system can protect the civil rights and civil liberties of all workers and may actually result in less of an abridgement of civil rights than continued inaction on illegal migration.

The development of a computer data base with or without a card system for the purposes of verifying employment eligibility could enhance civil rights of workers and be a bulwark against the abuse of privacy.

The decision to institute a national system of employment eligibility and employer responsibility is premised on the benefits that will accrue to the whole society from curbing the flow of undocumented migrants, supporting the rule of law and respect for it, and ending a set of circumstances that allow the exploitation of an underclass of persons.

This decision, we feel, must be accompanied by strict legislative limitations on the use of the employee identification system and strict limits on access to and the use of the data base behind it.

Those who are fearful of potential Government control and abuse often ignore what is already happening in the private sector relating to the unauthorized use and sharing of personnel information files. What is needed is explicit legislation to protect personal rights and to institute penalties against those who ignore them.

Since my time has expired, may I simply read the last paragraph, assuming the balance of the testimony will be included in the record?

Senator SIMPSON. It will indeed be received and you may do that, if it is a short one.

Mr. MCCLEARY. Yes. I will simply conclude with that, Senator.

[The unread portion of Mr. McCleary's prepared statement follows:]

Let us remember that in the final analysis, what protects our society and individuals against abuse and "Government control" is the existence in our traditions, our habits and our laws of a concern for civil rights and privacy of individuals, in addition to explicit legislative and legal protections. The will to resist governmental control or private misuse of personal information is the only real mechanism that will protect us. A national worker identification card alone or data base system alone will neither tilt the United States to authoritarian controls nor protect it from such abuse.

Any system of worker eligibility must be based itself on secure forms of identification. Using birth certificates, baptismal certificates, drivers' licenses, draft cards, and even social security cards which may themselves be fabricated, will do no good as the sole basis for a new system. They can be part of the documentation; they must not be the exclusive documents. Any new system must also rely on enrollment interviews, information from INS, the Department of Labor, the Social Security Administration and other appropriate governmental agencies. In addition, social service organizations and religious groups should be involved in this process where they may be helpful in establishing eligibility to work.

Finally, an identification system should be relatively familiar and simple to administer. This last criterion has led many of my committee to favor the enhanced counterfeit resistant social security card as the easiest and most logical solution to the thorny issue of "what kind of identifier." Even the Attorney General's Inter-Agency Task Force recommended the use of a more secure social security card as identification for citizens and aliens seeking work in the United States. Unfortunately, in the process of hammering out an immigration policy, the cabinet did not approve this method of identification of eligible employees.

Experts agree that the social security system is in desperate need of up-grading at the present time. In the process of review of the system, changes in the form of the card could be made to convert it to an effective fraud-proof form of employee identification. This would be relatively simply, and compared to other forms of worker identification, similar in cost. The social security card has the additional advantage of presently being familiar to everyone and currently an identification number for individuals in this country in hundreds of federal and state record-keeping functions, as well as in public and private institutions such as banks, schools and hospitals.

Although specific provisions were legislated to control the expanded use of the social security number under the Privacy Act of 1974, we would still advocate protective restrictions to limit access to the information within the system and a stipulation that the card could not be required outside the social service benefit or employment application setting.

It has been variously estimated that the cost of implementing an identification system—any new system—could run anywhere from $300 million to $1 billion. That is a significant investment, especially in this time of retrenchment. But in the light of the billions of dollars which illegal immigration costs our nation and in light of the social, economic and political strains which the growing tide of illegal immigration imposes upon our society, this would be a wise investment.

Finally, the citizens' committee urges that the Congress take immediate action to initiate an employer sanctions-employee identification system. Implementation can be accomplished in stages, perhaps by phased-in coverage of certain age groups, but it must not wait until several years or even a decade before a system is approved and begun. You have a unique opportunity to start this process now, and I commend you, Mr. Chairman, for your forthright approach to this issue.

Thank you very much.

Senator SIMPSON. Thank you, Mr. McCleary.

Now our former Secretary of Labor, please.

STATEMENT OF RAY MARSHALL, FORMER SECRETARY OF LABOR, MEMBER OF SELECT COMMISSION ON IMMIGRATION AND REFUGEE POLICY, ON BEHALF OF ECONOMIC COUNCIL OF THE UNITED NATIONS ASSOCIATION OF THE UNITED STATES, ACCOMPANIED BY SYLVIA HEWLETT, EXECUTIVE DIRECTOR

Mr. MARSHALL. Mr. Chairman, I would like Dr. Sylvia Hewlett to give you some comments about the Economic Policy Council of the United Nations Association. I am a member of the steering committee of that organization and my remarks are on behalf of the Economic Policy Council. So, I would like for Dr. Hewlett to explain what that organization is.

Senator SIMPSON. Thank you.

Ms. HEWLETT. I will just take a minute to put into context the recommendation of our group. The Economic Policy Council is a private sector group which represents both labor and business leadership.

It was founded in 1976 and is chaired by Bob Anderson of Atlantic Richfield Corp., and on its steering committee now are Charles Barber, chairman of ASARCO; Henry Kaufman of Solomon Brothers; Ray Marshall, who you all know; and Jack Sheinkman who is secretary-treasurer of the Amalgamated Clothing and Textile Workers Union.

This group is one of the few groups that brings together business and labor in a working partnership in the formulation of policy.

Each year the Economic Policy Council addresses three public policy issues, and during 1981 immigration policy was chosen as one area which needed the attentions of our group.

We have now completed the report—and I would like it to be inserted in the record. The only other thing I would like to add is that Jack Sheinkman chaired the panel and I believe you have a list of the panel members which range from John Carr, of the Grumman Corp., to Howard Samuel, president of the IUD, as well as specialists in the field. This report has now been endorsed by the entire membership of the Economic Policy Council.

I will now hand over to Ray Marshall, who will speak specifically to our recommendation in the sphere of verification systems.

Senator SIMPSON. Thank you very much, Dr. Hewlett.

Mr. MARSHALL. Mr. Chairman, let me preface my comments first by commending you for the leadership you have given this issue. I know from long personal experience that it is a very difficult one. I think it is probably the most difficult question that I have ever dealt with in my professional life.

Senator SIMPSON. Thank you.

Mr. MARSHALL. I think it is a very serious problem and it is difficult to find solutions to it. I do not believe that there are perfect solutions, and I think therefore you have to consider the alternatives in each case, and it seems to us in the Economic Policy Council that not doing something about the issue costs you a great deal more than doing something about it.

Let me summarize very quickly our recommendation. We recognize that—as you have stated earlier—there are two mutually supported shortrun ways to reduce the flow of undocumented workers, to better police U.S. borders and shorelines, and to remove incentives for entry by making it illegal for employers to hire workers who are not authorized to work in the United States.

We therefore recommend: (a) Increase in the technical and human resources available to the Immigration and Naturalization Service to permit more effective physical control of immigration; and (b) amendments to the Immigration and Nationality Act to make it unlawful for employers to hire workers who are not authorized to work in the United States.

Second, in order to facilitate employer compliance with the immigration laws, a system of work authorization for all new employees should be adopted, such as the one developed by the U.S. Department of Labor for the Select Commission on Immigration and Refugee Policy.

This system would apply to all new entrants to the labor market as well as job changers, and therefore would avoid the intensification of employment discrimination against foreign-looking and foreign-sounding people.

In order to avoid the civil liberties, international relations, and human problems associated with mass deportation, illegal immigrants who entered the United States before a predetermined date and who have been in continuous residence for a period of time should be permitted to remain in the United States as permanent resident aliens.

If, after illegal immigration is brought under better control and it appears that more workers can be absorbed in the United States, it might be appropriate to admit them as part of a temporary worker program. But we believe that it is important to deal with the problem of illegality before even considering such a policy.

The proper sequence of changes in immigration policy is very important. We think that these recommendations could be adopted as a package, but that, for example, making the system more secure should precede any amnesty.

Because it is important to have friendly relations with neighboring countries, and because a complete solution to illegal immigration would be to reduce the wide disparities in employment opportunities and compensation between countries, the United States should work with neighboring countries to develop suitable policies concerning immigration and the chief factors affecting it.

With respect to the particular problem of identification we believe the alternatives are pretty much as you have specified them. You can better control the border, but you are not likely to be able to solve the problem through that means.

What you will have to do in order to physically seal the border would be repugnant to democratic principles as well as to our relationship with other countries.

So, we recommend stepped-up enforcement, but we also believe that there must be some form of worker identification—not necessarily a card or number. The standard that we think ought to apply is this: Any test of worker eligibility ought to be simple and fair. It should not lend itself to discrimination against foreign-looking workers and it should not intrude on individual freedoms any more than is strictly essential.

We debated these issues at great length and are very much concerned about the potential for discrimination and intrusion on privacy, and believe that safeguards ought to be developed.

But I think we have to consider the impact of not doing anything on the civil liberties of people as well as the effect of having some easy way for the employer to determine who is in the country illegally and therefore to provide an easy defense. Any new system should be as cost effective as possible.

In the paper we give greater attention to all of these issues. That is all.

[The prepared statement and material subsequently submitted by Mr. Marshall follow:]

PREPARED STATEMENT OF RAY MARSHALL

(Revised Version Illegal Immigration: Challenge to the United States, September 1981, the Economic Policy Council)

INTRODUCTION

Immigration is one of the most important and complex problems the United States faces today. It is, however, a problem with a mixture of opportunities as well as dangers. If we develop appropriate immigration policies we can continue to benefit from the rich quality of life that comes from cultural diversity, material progress, and amicable relations with other countries. On the other hand, improper immigration policies can threaten our national sovereignty; widen income disparities and damage the quality of life; generate racial and social tensions; and exacerbate relationships with foreign countries.

If immigration is an important and complex problem it is also an increasingly urgent national issue. First, there is the pressing problem of gaining control of illegal immigration. The United States is currently experiencing a large illegal or undocumented influx. As is the case with all clandestine processes, it is almost impossible to obtain accurate data on such migration, but most observers would agree that the annual inflow of illegals is between 500,000 and 1 million a year and that this inflow has greatly accelerated over the last ten years. This constitutes a flagrant violation of national sovereignty, as control over entry by non-citizens is one of the two or three universal attributes of nation states. Apart from the fact that the U.S. seems to have less control over its borders than any other major industrial country, this illegal inflow is creating a large pool of persons (estimates are in the 4-6 million range) who live and work in our society but with less than full protection of our laws. This obviously makes these people a target of exploitation and intimidation.

Second, there is growing concern over the rate of growth and the sheer size of the inflow. Net immigration (legal and illegal, immigrants and refugees) is now well in excess of one million per year, which means that the U.S. accepts twice as many immigrants and refugees than the rest of the world together.[1] This rate of inflow is at the highest level in our history. It is usually not recognized that the nation's largest number of immigrants came not in 1911 or 1883 but in 1980. Legal and illegal immigration accounts for half the United States' population growth rate and a rising percentage of its crime and welfare statistics, and is bound to have an impact on the society and on the economy. Can we successfully integrate the newcomers or will we find, particularly in times of rising unemployment, that xenophobic impulses and racial and ethnic tensions become more pronounced as citizen workers feel increasingly threatened by immigrants? Perhaps the most sobering factor in these calculations is that unless a restrictive policy is put into place, the rate of inflow into the future is likely to accelerate rather than stabilize or diminish, generating even greater domestic problems.

The pressures that will make for an accelerating inflow (in the absence of tighter controls) are fairly obvious and stem from the inability of Third World countries to absorb their rapidly expanding populations into productive, decently-paid occupations. The world's population was about 4 billion in 1975 and will reach 6.4 billion by the year 2,000. Most of this population growth is in developing countries which already have serious unemployment and underemployment problems. These nations will need 600 to 700 million new jobs between 1980 and 2000 just to keep unemployment from rising. To put this in perspective, 600 or 700 million is more jobs than existed in all of the industrialized countries combined in 1980. These pressures will not be lessened by declining birth rates which tend to accompany the industrialization of Third World nations, since most of the people who will enter the work force during the next two decades already have been born. Of course the U.S. may be more affected by the specifics of the Mexican situation than by the general characteristics of the Third World. But Mexico, despite its high growth rates and oil wealth, reproduces the picture described above. The Mexican population of over 70 million will double by the year 2,000, and the total number of jobs that would have to be created in Mexico during the next twenty years in order to (a) accommodate all new entrants to the labor force (b) absorb the present arrears of unemployed and underemployed into productive full time employment and (c) reintegrate those who would otherwise be employed in the U.S., is 31 to 33 million jobs.[2] Even if Mexico is to sustain a growth rate of 6.6 percent a year (a record of sustained economic growth that is virtually unprecedented among developing countries) only 20 million new jobs would be created before the end of the century, which leaves a sizable deficit! It must also be recognized, that no matter how many new jobs are created in Mexico during the next twenty years, the real wage differential and changing currency values between Mexico and the U.S., will draw workers across the border.

In summary, we have a massive illegality problem, a massive numbers problem, and external pressures are such that, left to themselves, both problems will get much worse over the course of the next two decades. Despite the urgency of these problems there are a variety of difficulties in the way of forming a more effective and coherent national immigration policy.

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[1] Michael I. Teitelbaum, "Right versus Right: Immigration and Refugee Policy in the United States," Foreign Affairs Fall 1980, p. 25.

[2] Wayne A. Cornelius "Immigration, Development Policy, and Future U.S.-Mexican Relations" in Robert H. McBride (ed.) Mexico and the United States (Englewood Cliffs, New Jersey: Prentice-Hall, 1981) p. 108.

The pressures to migrate from the underdeveloped countries are so strong that some Third World leaders are beginning to assert an international right to immigrate, and others believe migration forces are so strong that they cannot be stopped. The President of Algeria, for example has declared:

"No quantity of atomic bombs could stem the tide of billions . . . who will some day leave the southern part of the world to erupt into the relatively accessible spaces of the northern hemisphere looking for survival." [3]

While the Mexican Foreign Minister Jorge Castaneda told a Washington audience in 1978: "No matter what restrictive measures you may adopt the United States will continue to absorb for some time to come part of our excess population." [4a] These views raise important sovereignty issues, especially the right and ability of the United States to control its borders.

The second deterrent to the development of an effective immigration policy for the United States is the diversity of interests, and the lack of political consensus on this complicated issue. Unlike other political problems, there is no clear ideological division on these matters. Allies on economic policy, for example, often disagree on immagration policy. There is no sharp "conservative" or "liberal" division. Moreover, immigration is a highly emotional issue involving ethnic and racial agendas, attitudes, and fears which are not always clear or expressed. Immigration, in addition, involves emotions and principles which are not easily compromised. It is no wonder, then, that most experienced politicians see the immigration question as dangerous territory with serious short-run costs and no clear advantages despite the fact that public opinion polls repeatedly show that the overwhelming majority of Americans are greatly dissatisfied with our immigration policy and want the government to take action to solve the problem.

Another important deterrent to effective immigration policy is the absence of acceptable data to resolve disputes about the number and impact of illegal immigrants. The data problem is, of course, inherent in any illegal activity and therefore is never likely to be satisfactorily resolved until immigration is legalized. Because of the absence of reliable statistics, interpretation tends to be colored by the biases of the interpreter. Those who favor relatively unlimited immigration minimize the numbers and tend to exaggerate the positive effects of legal and illegal immigration. Those who want to restrict immigration tend to exaggerate both the numbers and the negative impacts.

Another complication is the dynamic long run nature of the immigration problem and the difficulty many of our public and private systems have in dealing with events that impact 10 or 20 years in the future, even when these events are demographically determined and therefore are highly predictable. In too many cases we have developed policies after crises have occurred rather than in order to avoid crises. Moreover, the dynamic nature of this process causes conclusions made about the impact of immigration at one stage to be invalid at another even though these stages have demonstrated a high degree of regularity and predictability through time and in different countries.

Over the course of the last years there have been nuimerous commission reports, congressional hearings and academic writings which detail the trends and implications described above. These efforts have served to underline the seriousness of the problem and have prompted a move to reform the entire system of immigration controls.

The Economic Policy Council pinpointed immigration policy as a critical issue in its recent publication "Relationships in the North American Economic Area" (this is a report by an EPC panel chaired by Charles F. Barber). Given the fact that the EPC represents both business and labor leadership, is non-partisan and has no ties to special interest groups, it is particularly suited to analyzing this complex and crucial issue. The Council recognizes that immigration is one of a number of powerful economic and social forces interacting in our increasingly international world. Larger and larger totals of goods, services and resources are being exchanged among countries. The immigration issue needs to be analyzed and resolved in ways that take account of these surrounding forces. In turn, timely progress in the development and implementation of a forward looking immigration policy can be of help in dealing with other of the key economic and social policy issues facing the U.S. and its trading partners.

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[3] Cited by Otis Graham, "Illegal Immigration and the New Reform Movement," paper for the Federation for American Immigration Reform, Washington, D.C., February 1980, p. 11.

[4a] Jorge Castaneda, "Mexico and The World," paper presented Oct. 30, 1980, Washington, D.C.

SUMMARY OF RECOMMENDATIONS

1. There are two mutually-supportive short-run ways to reduce the flow of undocumented workers: to better police U.S. borders and shorelines and to remove incentives for entry by making it illegal for employers to hire workers who are not authorized to work in the United States. We therefore recommend (a) an increase in the technical and human resources available to the Immigration and Naturalization Service (INS) to permit more effective physical control of immigration, and (b) amendments to the Immigration and Nationality Act to make it unlawful for employers to hire workers who are not authorized to work in the United States. Employers who break this law should face a penalty which constitutes a reasonable disincentive. Such a penalty should escalate with repeated infractions.

2. In order to facilitate employer compliance with immigration laws, a system of work authorization for all new employees should be adopted (such as the one developed by the U.S. Department of Labor for the Select Commission on Immigration and Refugee Policy (SCIRP). This system would apply to all new entrants to the labor market as well as job changers and therefore would avoid the intensification of employment discrimination against "foreign looking" or "foreign sounding" people.

3. In order to avoid the civil liberties, international relations, and human problems associated with mass deportations, illegal immigrants who entered the United States before a pre-determined date, and who have been in continuous residence for a period of time, should be permitted to remain in the United States as permanent resident aliens. Although this recommendation will produce serious administrative problems as well as questions of equity because of its unfairness to those who have been waiting patiently to enter the United States legally, it nevertheless is an essential component of any effort to legalize immigration. An adjustment of status also recognizes the fact that illegal aliens have been in the United States for many years.

4. If after illegal immigration is brought under better control it appears that more workers can be absorbed in the United States, it might be appropriate to admit them as part of a temporary worker program. However such a program should have proper safeguards, such as a compulsory labor market test, to ensure that citizen workers are not displaced.

5. The proper sequence of changes in immigration policy is very important. For example, it makes sense to tighten up on illegal immigration (by increasing the resources of the INS, making border control more effective, instituting employer sanctions and putting a work authorization system in place) before granting amnesty. Otherwise there will be a huge inflow of illegal workers in anticipation of this measure. It would be desirable to adopt all of these measures as part of a phased package. For example, even though amnesty were not immediately available it could be planned to go into effect at some predetermined date.

6. Because it is important to have friendly relations with neighboring countries, and because a complete solution to illegal immigration would be to reduce the wide disparities in employment opportunities and compensation between countries, the United States should work with neighbouring countries to develop suitable policies concerning immigration and the chief factors affecting it. Particularly important in this regard would be the tailoring of development assistance to Mexico and other developing nations to the south, so as to encourage labor-intensive projects. Over the long run this should help relieve pressure. The goal should be to minimize the adverse impact of our immigration policies on our neighbours.

DISCUSSION

Why Control Illegal Immigrants?

One of the most heated immigration controversies is over the impact of undocumented workers on the American economy. Some immigration analysts argue that illegal immigrants have a positive effect on the economy and therefore should not be regulated. In this view, the undocumented workers mainly take jobs legal residents will not take and therefore promote economic growth and improve the conditions of American workers, consumers, and employers. In this view, the undocumented workers do not burden social services because they pay more taxes than they draw down benefits. Opponents of controlling illegal immigration also stress the favorable impact of the undocumented workers in Mexico because they provide a "safety value" for unemployed and underemployed workers and their earnings help Mexico's balance of payments (remittances to Mexico are currently in the region of $3 billion per year). Those who support this position sometimes argue that it is really impossible to control immigration, so efforts to do so will cause more harm than good.

Those who favor controls stress the adverse impact on American workers, especially minorities, young people, and low-wage workers with whom the undocumented workers compete. In this view, the illegal immigrants depress wages, displace American workers, and perpetuate low-wage low-productivity jobs. Moreover, advocates of control argue, the undocumented workers and their children form an underclass who are easily exploited and who will in the future precipitate civil rights crises as they attempt to redress their grievances.

It is, as a practical matter, impossible to resolve this controversy, but the evidence seems to support the following conclusions:

(1) It would be very unrealistic to argue, as some do, that illegal immigrants do not displace any American workers, but it would be equally unrealistic to argue that the displacement is one-for-one. In fact, few if any serious students of this problem take either extreme. The controversy therefore is over which predominates, displacement or job creation.

(2) During periods of rapid economic growth and relatively low levels of unemployment—like during World War II—there is very little displacement and the foreign workers probably promote economic growth and net job creation. When unemployment is high, there clearly is more displacement.

(3) The arguments against displacement are based on specific micro cases, as well as the largely hypothetical macro effects of immigration. It is sometimes argued that there is no displacement because the undocumented workers only take jobs rejected by legal residents. In all industrialized countries, there apparently is a tendency for citizens to be less willing to take certain menial and low status jobs as economies advance. The most commonly cited empirical evidence for this argument is from a 1975 study of two California cases where efforts were made to fill vacancies created by apprehended illegals, one in Los Angeles and one in San Diego. The Los Angeles effort was unsuccessful because the jobs were not very attractive and paid less than the minimum wage. The jobs in San Diego were filled by commuters (i.e. legal border crossers) from Tiajuana.[4b]

As Weintraub and Ross observe, "It is a peculiar kind of rationalization that argues that no serious damage is done because only nondesirable jobs are lost and that legal residents cannot really have been hurt since they refused to accept less than the minimum wage in particular jobs at particular locations." [5]

In other areas, the jobs vacated by apprehended illegals are more quickly filled—especially when unemployment is higher and the jobs pay more than the minimum wage. A 1980 report, citing the California studies, concluded: ". . . in the suburbs of Chicago, where both wages and unemployment are running considerably higher than they were in San Diego five years ago, the Illinois Department of Labor has had no trouble filling openings left after Immigration Service raids on factories and businesses." [6] In one case in Elgin, Illinois the INS arrested 69 undocumented aliens in a foundry who earned between $4.50 and $13.00 an hour. Within hours, hundreds of local residents had applied for these jobs, all of which were filled within three days. INS officials also report no difficulty in other cities filling jobs vacated by apprehended illegals; in New York Hispanics and blacks who have lost their jobs report the presence of the illegals to the INS. According to a New York INS official: "There are many black teenagers who would like to have some of the jobs those illegal aliens are taking." [7]

The problem, of course, is that these examples, like those cited on the other side, are drawn from localized studies and may or may not be representative.

Clearly, however, whether or not there is displacement depends partly on the nature of the job. Because they have more alternatives, especially welfare and unemployment compensation, legal residents are reluctant to take menial jobs at less than minimum or prevailing wages. There are, therefore, undoubtedly many such jobs that legal residents will not readily accept. The policy question about these jobs is whether it is desirable for them to continue or what might happen if there were no undocumented workers to take them.

[4b] Wayne Cornelious, "La migracion ilegal mexicana a los Estados Unidos," Foro Internacional, 18 (3) : 399-429 (January-March 1978). Villalpando, Vic. et al, "A Study of the Socioeconomic Impact of Illegal Aliens on the County of San Siego," San Diego, Calif., 1977.

[5] Sidney Weintraub and Stanley R. Ross, The Illegal Alien From Mexico, Austin, University of Texas Press, Mexico-U.S. Border Research Program, 1980, p. 19.

[6] John W. Crewdson, "Illegal Aliens Are Bypassing Farms for Higher-Paying Jobs in the Cities," New York Times, Nov. 10, 1980, p. 1.

[7] Cited by Ibid.

Those who support the displacement thesis also point to the fact that while there might be localized shortages of legal residents for these jobs, there are no national examples of occupations filled exclusively by illegals: in other words, legal residents—especially minorities, young people and women—are concentrated in such jobs in every region of the United States. There is almost universal agreement that illegals depress the wages and working conditions in these low-wage jobs.

A major difference between the United States and the countries of Western Europe is that we have had a much larger secondary labor market because of large internal displacements of blacks and low income whites from Southern agriculture and because of heavy immigration—legal and illegal. We have therefore not had as much time to assimilate these large flows of workers, who tend to get trapped in relatively low-wage jobs.

It would, however, be a mistake to assume that illegals only occupy marginal low-wage jobs. While they are concentrated disproportionately in these jobs, which tend to be perpetuated by successive flows of illegals, there also is a tendency for experienced illegals to move into successively higher-paying jobs as they learn English and acquire experience. Many of the conclusions about the impact of undocumented workers are made from studies of agricultural workers, who are becoming a smaller part of the total flow of illegals. The data in Table 1, taken from two studies for the U.S. Department of Labor, show relatively small proportions of illegal immigrants employed in agriculture in the overall economy (18.8 percent) and a very small fraction of those employed in the Los Angeles Community study. Those who work primarily in urban jobs apparently have higher earnings. For example, the average yearly earnings of 351 undocumented workers apprehended in Chicago during a three-month period in 1978 was $9,360.[8] A comparison of Tables 1 and 2 suggests that illegal immigrants compete primarily with Hispanics and blacks.

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[8] New York Times, Nov. 10, 1980.

Table 1. Employment Patterns of Illegal Immigrants from Two Research Studies. Prepared for the U.S. Department of Labor.

	Detention Site Study 1974-5[A] All Apprehended Aliens	Los Angeles Community Study 1972-1975[B] Total	Previously Apprehended Alines	Never Apprehended Aliens
White Collar:	5.4	10.5	6.6	12.1
Professional and Technical	1.6	4.3	2.7	5.0
Managers and Administrators	1.3	0.7	.8	.7
Salesworkers	1.1	1.9	.8	2.3
Clerical	1.4	3.6	2.3	4.1
Blue Collar:	55.2	73.0	79.0	70.4
Craft Workers	15.3	28.8	32.8	27.1
Operatives	25.1	31.8	31.1	32.1
Non-Farm Laborers	14.8	12.4	15.1	11.2
Service Workers	20.6	16.1	14.2	16.9
Farm Workers	18.8	.4	.2	.5
Total Percent	100.0	100.0	100.0	100.0

Sources: [A]David S. North and Marion F. Houston, The Characteristics and Role of Illegal Aliens in the U.S. Labor Market: An Exploratory Study, Washington, D.C., Linton & Company, 1976, p. 104.

[B]Maurice D. Van Arsdol Jr., Joan Moore, David Heer, Susan P. Haynie, Non-Apprehended and Apprehended Undocumented Residents in the Los Angeles Labor Market. Final Draft submitted to the U.S. Department of Labor under Research Contract No. 20-06-77-16, (October 1978), p. 95.

Table 2. Percent Distribution of All Employed Persons in U.S.; All Employed Hispanic Persons, all Employed Mexican Origin Persons, and All Employed Black Persons, 1977.

	All U.S. Workers	All Hispanics	Mexican Origin	Black Workers
Total Employed	90,546,000	3,938,000	2,335,000	9,812,000
Percent	100.0	100.0	100.0	100.0
Occupations:				
White Collar:	49.9	31.7	27.2	35.3
Professional and Technical	15.1	7.4	5.6	11.8
Managers and Admin.	10.7	5.6	4.9	4.8
Salesworkers	6.3	3.7	3.0	2.6
Clerical	17.8	15.0	13.7	16.1
Blue Collar:	33.3	46.6	49.3	37.6
Craft Workers	13.1	13.7	15.0	9.0
Operatives	11.4	20.9	20.4	15.1
Transport Operatives	3.8	4.1	4.6	5.2
Non-Farm Laborers	5.0	7.9	9.3	8.3
Service Workers	13.7	17.1	16.5	25.0
Farm Workers	3.0	4.4	6.9	2.2

Source: Morris Newman "A Profile of Hispanics in the U.S. Work Force," Monthly Labor Review (December 1978), pp. 3-13; and Employment and Training Report of the President, 1979 (Washington: U.S. Government Printing Office, 1979) pp 262-3.

Another problem in assessing the displacement argument is the dynamic nature of employment and the difficulties involved in measuring the impact of illegals. The fact of illegality itself conditions the jobs the undocumented workers hold and therefore makes it difficult to measure the impact of their presence. In other words, if there were no illegals, the jobs would be different. For one thing, illegals are easily exploited and therefore are reluctant to complain about violations of their legal rights. Moreover, some employers prefer illegals who compare their poor jobs in the U.S. with even poorer alternatives in their home countries and therefore are more satisfied than natives with low wage menial jobs, at least in the short run. Because illegals depress wages and working conditions and sometimes cause jobs to be considered undesirable simply because they occupy them, it is difficult to determine whether or not those jobs would exist if there were no illegals.

Similarly, if there were no illegals employers would have other options. They could raise wages, improve management, and make the jobs more attractive, or they could mechanize. Mechanization would probably increase national productivity, because an important reason for declining productivity in the U.S. has been declining capital-labor ratios. (Because the work force has grown faster than investment since 1976, despite the fact that investment relative to GNP was higher between 1975 and 1980 than at any time since World War II.) The continuation of low-wage jobs because of a steady growth of relatively unskilled labor tends to perpetuate low-wage, low-productivity jobs. Illegal immigration might increase GNP but not necessarily productivity. Much of the argument against displacement, as well as the need for foreign workers to meet presumed future labor shortages, assumes given wages and combinations of labor and capital, which is not very realistic. Again, however, the policy decision relates to whether it would be better for immigrants to perpetuate low wages and poor working conditions or whether it would be better either to (a) legalize immigration so workers could at least protect themselves from exploitation or (b) reduce the supply of labor in order to encourage job and productivity improvements.

Another option available to employers who have difficulty attracting unskilled workers would be to shift low-wage work to developing countries, as the Japanese have done. The Japanese are very reluctant to accept immigrants. They therefore have maintained their productivity and higher levels of skilled and professional work forces in Japan by shifting production requiring limited skills to labor surplus economies with lower wage standards. This practice indicates the close relationship between immigration, trade, and external investment in a world where domestic economies are becoming increasingly internationalized.

Thus, the economic impact of immigration depends on labor market conditions in the United States and the characteristics of the immigrants. If labor markets are relatively tight and the immigrants have skills that are in short supply, the immigrants can cause increased productivity and growth. If the immigrants are unskilled or do not have skills that are in short supply and if unemployment is relatively high in the labor markets where immigrants concentrate (as North demonstrates to have been the case in the United States),[9] immigration is more likely to have adverse labor market impacts.

Despite the paucity of data and disagreements about the economic effects of undocumented workers, most serious students of this problem agree that the foreign workers have differential impacts on various groups. Low income legal residents are clear losers, employers probably gain and consumers of the goods and services produced by the immigrants also probably gain, at least in the short run.

Although the most important impacts of illegal immigration are in labor markets, there are other concerns:

(1) There is some question of the extent to which immigrants encumber social services. Apparently the degree of use is not great because, at least at first, immigrants tend to be young unmarried people who pay taxes but make limited use of services. Clearly, however, as the immigrant work force matures, it will make greater use of social services. Illegal immigrants apparently make extensive use of public health and educational services; they make less use of unemployment compensation and very little use of social security and welfare.[10]

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[9] David North, "The Impact of International Migration on the U.S. Labor Market," a paper presented at the Third Annual National Conference on Immigration Law and Policies, New York, Mar. 20, 1980.

[10] David S. North, Government Records: What They Tell Us About the Role of Illegal Immigrants in the Labor Market and in Income Transfers, Washington, D.C. New Transcentury Foundation, April 1981.

(2) Illegal immigration if unchecked could have serious political and social consequences. Second generation immigrants could be less satisfied with their conditions than their parents, leading to protests. There also is potential, unless abated, for language and political conflicts because a higher percentage of the illegal immigrants are Spanish-speaking. In recent years it is estimated that approximately half of all immigrants—legal and illegal—are Spanish-speaking.[11]

TECHNIQUES FOR CONTROL

In general there are two basic short-run approaches to the control of illegal immigration. The first is to try to stop people at the border. There is general agreement that reliance on this technique alone would be very expensive and would be objectionable to many people in the United States and in Mexico and other sending countries. The second approach is to remove the job attraction by making it illegal for employers to hire workers who are not in the country legally. The anomaly of our present law is that it is illegal for people to enter the country without documents, but is legal for employers to hire them—an inconsistency not lost on foreign nationals or their governments. Even though it is illegal to enter the country without documents, the only penalty for doing so is deportation, and deportees often return almost immediately.

There is agreement that the ultimate solution to illegal immigration is to remove the great economic differentials between the United States and the sending countries, especially Mexico. However, these differentials are not likely to be eliminated in this century, despite the large Mexican petroleum reserves.

CONTROL OF THE BORDERS

The knowledge, spread rapidly around the world through modern communications technology, that American borders are easily penetrated, and that penetration carries no serious official penalty, tends to make millions of people willing to accept the modest risk associated with illegal entry. Similarly, it is equally well known that our internal security is so lax that the chance of detecting people who violate the terms of nonimmigrant visas is very small. The total budget of the INS was $337 million in 1979 smaller than the budgets of the police departments of many large cities. The Border Patrol has no more than 450 enforcement people at work at one time, which is smaller than the force that guards the national capital and Federal office buildings in Washington. In 1979 the Patrol had 3 leased helicopters and 28 light aircraft. The internal surveillance and record keeping system was so bad that it was not possible to tell whether or not many people entering with visas ever left. There is apparently a flourishing business in counterfeit student visas. It also is very easy for people to enter the United States through Puerto Rico and avoid detection.

While it would neither be desirable or possible to completely close the border, there is no doubt that more resources for the INS and more effective management and information systems would greatly improve enforcement. Furthermore, a major strengthening of INS capability would be an essential prerequisite to effective implementation of other recommendations in this paper.

EMPLOYER SANCTIONS

Making it unlawful for employers to hire workers who are not in the country legally is essential to effective immigration control as this goes a long way towards destroying the economic incentive for workers to cross the border illegally. Employers who break this law should face a penalty which is severe enough to constitute a reasonable disincentive. The penalty should escalate with repeated infractions. The main objections to employer sanctions are that sanctions would cause employers to discriminate against "foreign looking" or "foreign sounding" people and that employers are not equipped to determine whether or not job applicants are illegal immigrants.

WORKER IDENTIFICATION

The problems raised by employer sanctions could be overcome by instituting a fair and simple method for employers to determine worker eligibility. The system should be required of all workers in order to avoid the discrimination problem mentioned above. If the social security card could be made counterfeit-proof it could serve this purpose. There are, however, several objections to using the social security card for this purpose. Social Security officials argue that the card was never intended to be an identifier and its use for that purpose would cause great damage to the fragile Social Security information system which would not sustain this added burden. Others point out that it would be very expensive to issue new social security cards. In 1980, the General Accounting Office estimated the costs at between $850 million to $2 billion.

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[11] Teitelbaum, op. cit. p. 43.

Civil liberties organizations, including the American Civil Liberties Union, raise other objections to the use of the Social Security card or any national identifier. Accordingly, the ACLU ". . . has long been on record as opposing legislation subjecting employers to criminal penalties if they hire illegal aliens, by reason of its discriminatory effects upon many citizens and legally resident aliens. Because of the harmful effects upon many citizens and legal aliens caused by the proposed identification cards would be even more profound, ACLU opposes this measure as well. . . .

"The transformation of the Social Security card into an identity document and prerequisite for employment would bring this country perilously close to the adoption of an internal passport." [12]

Those who favor the social security card believe the civil libertarians to have adopted a very narrow approach. The use of the card for this purpose would not make it a national identifier because nobody would have a right to demand to see the card except employers. There also is some question about whether civil liberties are diminished if people have the ability voluntarily to identify themselves. Moreover, if it is true that an identifier is essential to employer sanctions, then the alternatives could be more threatening to civil liberties—i.e. efforts to "seal the border." Similarly, the adverse impact of illegal immigration on low income workers and the loss of respect for law and order from illegal immigration could be much more damaging then the use of the Social Security card for employment verification purposes. The Social Security card already is supposed to be issued only to people who are in the country legally.

There is nevertheless a justifiable concern about the potential for the invasion of privacy because of the growing use of the Social Security card as an identifier and its use to consolidate information about individuals.

Because of opposition from civil libertarians and the fragility of Social Security information system, the Department of Labor, at the request of SCIRP, designed a "Work Authorization Enrollment and Verification System" that would not burden the U.S. Employment Service network throughout the country. On the contrary: "piggybacking on the computing power and communication capability of a fully automated system could provide a much-needed and valuable aid to traditional U.S. Employment Service labor-exchange activities and dissemination of labor market information. For example, job openings, job banks and professional registries could be immediately available to the entire United States." [13]

The cost of this system is also estimated to be much less than the GAO's 1980 estimate for the Social Security card system. Nonrecurring implementation costs are projected to be $87 million and projected operational costs are $553 million for the first year, and about $308 million the second year. The system would become fully operational in six years, after which the costs would be about $203 million a year.

Whatever system is put into place (whether it be a counterfeit-proof Social Security card or a work authorization system along the lines of the one developed for the Department of Labor) it should serve as (1) a simple and fair test of worker eligibility, (2) not lend itself to discrimination against foreign looking workers, (3) not intrude on individual freedoms any more than is strictly essential, and (4) be as cost-effective as possible.

AMNESTY

One of the least controversial recommendations among the experts is one with great opposition from the public-amnesty or adjustment of status for illegal immigrants who have been in the United States for some time. For example, SCIRP unanimously recommended amnesty. It is generally agreed that adjustment to permanent resident alien status for illegal immigrants would avoid mass deportations of millions of people who are in the United States illegally. A roundup of that magnitude would be very damaging to internal affairs in the U.S. as well as to the domestic economies of countries like Mexico. Moreover, legalization would be much less harmful than the continuation of the present system of illegality and almost uncontrolled penetration of our borders. Amnesty also recognizes the fact that illegals have lived and worked in the U.S. for many years.

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[12] ACLU memorandum "Counterfeit-Proof Social Security Identification Cards," Apr. 6, 1977.

[13] "A work authorization Enrollment and Verification System: A Technical Working Paper," USES, U.S. Department of Labor, October 1980, p. 4.

Although amnesty or "adjustment of status" is a practical and moral necessity, it is not without serious problems. One of these is the unknown number of people who would be eligible for amnesty. Unless permanent residency for some specified time were made a prerequisite, the numbers of individuals who have worked some time in the United States probably would be very large indeed. Moreover, amnesty would automatically increase the flow of immigrants in the short run because of the need to permit the new legal resident aliens to bring in their close relatives (spouses and minor children).

Many object to amnesty because it appears to reward those who have violated our laws and would be unfair to those who have waited patiently, sometimes for years, to enter legally.

There is some question, of course, whether amnesty would be very successful. The verification and administrative problems with such a program would be enormous. Moreover, undocumented workers might prefer to continue as illegals than face the uncertainties of the adjustment of status process. The experiences of other countries suggest that an amnesty system needs to be very carefully planned and executed, with some combination of carrots and sticks, and some systematic use of voluntary organizations and the church to get the illegal immigrants to come forward. Such a system should mean a higher probability that those who did not come forward would be deported and if deported would have very little chance to reenter.

PHASING

It clearly is important to adopt an immigration control policy in phases to prevent some parts of a system from rendering other parts ineffective. For example, to adopt amnesty before a more effective border enforcement and internal visa control system were in place would clearly be unwise, because it would invite a flood of immigrants. Similarly, since the numbers of illegals as well as the proportion of illegal residents who will come forward for amnesty, are unknown, it would be desirable to deal with illegal immigration first and see what effect that would have on immigration, before making other changes in the immigration system.

RELATIONS WITH SENDING COUNTRIES

The control of immigration has very important implications for foreign relations. In our case, this is especially important with respect to Mexico, where the immigration question evokes strong and conflicting passions. This problem is complicated by the immense population pressures on Mexico; the 2,000 mile permeable border between the United States and Mexico; wage differentials of as much as 10-1; the history of relations between Mexico and the U.S., which creates suspicions of U.S. motives and makes it necessary for Mexican political leaders to go out of their way to avoid any suggestion that they are being dominated by the United States: the large indigenous Spanish-speaking population in the U.S.; and the history of relatively free movement of Mexicans into the U.S.

Mexicans argue that more favorable trade relations between Mexico and the U.S. would help halt the flow of people out of Mexico, but some U.S. trade experts believe Mexico has greater barriers to U.S. exports than we do to theirs, and point out that Mexico will not join GATT to help achieve multinational trade liberalization. Moreover, in the view of these experts, the main limitation on Mexican exports to the U.S. is their lack of competitiveness, not tariff or non-tariff trade barriers.

Mexicans also point to the inconsistencies in our laws (especially the absence of strong immigration controls and employer sanctions) to suggest the view that Americans, especially American employers, have encouraged illegal immigration. It would be unfair, in this view, to suddenly halt the flow or to deport millions of illegals back to Mexico.

There is fairly uniform agreement that deportation or drastic curtailment would cause great difficulty in Mexico and this would not be desirable because a stable, friendly, progressive Mexico is in our interest.

The problem for Mexico is that, despite a very high 6-7 percent annual growth rate, the work force is growing much faster than potential job creation and will continue to do so for some time. As was mentioned in the introduction, the Mexican population of over 70 million will about double by 2,000; the working age population is increasing at about 600-800 thousand a year and, at best, only about 460 thousand new jobs are likely to be created. The work force will continue to grow because the Mexican population is relatively young—50 percent of the population is under 14 years of age. Unemployment and underemployment—currently about 50 percent of the work force—will therefore be serious problems for the foreseeable future.

Some people hope that economic development based on rich oil reserves will narrow the income differentials between the United States and Mexico and therefore slow the pressure for outmigration. But it is doubtful that this will happen very fast. For one thing, economic development often accelerates emigration by providing depressed people the means to move. In addition, much depends on what kind of development takes place in Mexico and where it occurs. In the past, Mexico has emphasized capital-intensive agricultural and industrial activities (which displace people) and the impact of the type of development strategy has been very uneven and unequal.

Another controversial issue is linkages between immigration, trade and energy. It is sometimes argued that the United States should increase trade and immigration in order to get more oil and gas from Mexico. Some Mexican leaders have suggested linkages, but others are fearful that this would strengthen U.S. dominance of Mexico.

American experts also question the value of linkage. For one thing, we must be sensitive to Mexican concerns about U.S. domination. For another, it makes little difference to us, in strict energy terms, whether Mexico sells oil to the United States or to other countries—it will still enter the world oil supply. Moreover, the price is not likely to be set by Mexico, but by world market conditions (as affected by OPEC). Similarly, the U.S. is the most logical market for Mexico's natural gas. It would therefore, be unwise and unnecessary to attempt to link oil and trade with immigration.

It is in our interest for Mexico to experience sound, balanced economic growth and poltical stability, but this will be done mainly by Mexican leadership. We can be sensitive to this process, and aid it with policies compatible with our national interest, but we cannot dictate its course. Similarly, the United States has the right to protect its borders and should not negotiate that right. While we should keep Mexico fully informed and wherever possible avoid acts that would greatly damage their economy, we must be mainly concerned about our own national interests. Moreover, it is doubtful that Mexican political leaders will face up to that country's serious labor problems, especially effective large-scale rural development to hold more people in rural areas, so long as the United States continues to provide a convenient safety valve by absorbing part of Mexico's surplus population.

TEMPORARY OR GUEST WORKERS—THE DEBATE

One suggestion for controlling illegal immigration is to legalize the flow of immigrants through temporary worker programs. Advocates of a temporary foreign worker program contend that such a system is an essential component of any program to control illegal immigration, both as a way to meet the labor needs of employers who now rely on the undocumented workers and to continue the "safety-valve" for Mexico.

Those who make this position usually make three arguments:

1. The U.S. cannot physically or politically close its borders to illegal entrants.

2. The U.S. economy has become dependent on the illegal immigrants who are employed mainly in low wage, menial jobs, often in remote areas, that American workers will not accept.

3. The U.S. has sanctioned illegal entry by tolerating it for years. To abruptly close this labor export "safety valve" now available to our labor-surplus neighbors may crete unwanted poltical instability in those countries.

Opponents of a temporary worker program respond as follows:

1. The proponents of a large temporary worker program deny the U.S. one of the basic tenets of national sovereignty—the right to regulate the movement of foreign nationals across our borders. It is true that we have a stake in the political stability of our labor-surplus neighbors, and should work with them on this and other mutual problems, but our basic priority must be to protect the interests of legal residents of the United States.

2. The employment of aliens does not prove the unavailability of domestic workers. Aliens may be preferred by employers because they are willing to work "hard and scared" at low wages and under adverse conditions. Despite the nature of this competition, it is hard to find an occupation that Americans will not take; legal residents dominate the work forces of every industry and occupation in the U.S., proving that Americans are willing to take "alien jobs." It is true, of course, that workers with American standards and aspirations are less satisfied with many menial,

low wage jobs than their Third World competitors, but this is a temporary satisfaction because the longer they stay here the more likely foreign workers are to adopt American standards. American employers will have little motive to improve these jobs if they have a ready supply of foreign workers.

3. There is no evidence that temporary workers reduce the flow of illegal immigrants—instead, they are likely to increase the flow unless there are effective controls, as was the case with the Bracero program in the U.S. and the guest worker programs in Europe.

4. A program large enough (perhaps one million work permits annually) to accommodate all the aliens now entering illegally will adversely affect U.S. wages and working conditions, especially in secondary labor markets.

5. A program small enough (100,000 permits annually) not to have a serious adverse effect on U.S. wages and working conditions will not reduce pressures for illegal entry.

6. Employers arguing that they will "go out of business" without aliens are really saying that they cannot survive without subsidies. Alien labor willing to work at low wages is a labor subsidy, just as a low-interest loan is a capital subsidy. If subsidies to some industries or countries are deemed desirable, these should be given by all of the people and not primarily by our lowest-paid workers who can least afford the sacrifice.

7. If temporary foreign workers do not participate in social security, unemployment and disability insurance, and other payroll tax supported programs, employers will prefer aliens because they are cheaper than domestic workers (who must participate). If temporary foreign workers do participate, long-term burdens on these programs could increase since most social insurance programs pay out relatively more benefits to low wage earners. Temporary workers have a tendency to become permanent as some of them form attachments to their host countries, form families and attract supporting population. It cannot therefore be assumed, as is often done, that the foreign workers will not use social services and will always pay more taxes than the costs they impose on society, even though this is likely to be true when the foreign workers first come. It is a strange theory of human nature that assumes any group will remain young, unmarried males who are permanently satisfied with inferior status.

8. Temporary worker programs are difficult to administer. Experience with the H-2 program shows the establishment of a simple yet reliable test of domestic worker availability to be very difficult. It also is hard to make a program like this work if employers prefer the foreign workers, as they often do.

9. Temporary worker programs raise many policy issues: Is the employer entitled to recruit foreign workers if Americans can do the work? Or should the test be that Americans must be able to do the work as well as the foreigners? Is it fair for mainly prime working age males to compete with Americans with a normal range of age and sex characteristics? Is it appropriate to permit discrimination on the basis of race, age, or sex that would be illegal with domestic workers?

10. Once in the U.S., it must be decided if aliens will be required to work for a specific employer or to take any job in a specified area. If recruited for a specific employer, what rights to change jobs will the migrant have? Where will the migrant go to make complaints or appeals? Will the employer provide housing and social services? Who will inspect and monitor these employer-provided services?

11. If migrants are not tied to a specific employer, who is responsible for housing and other services? Will migrants use local Employment Service offices to find jobs? Who gets priority, migrants or domestic workers? Can alien workers be managed to minimize their adverse impacts if they are free to search for their own jobs?

12. Given established patterns of foreign worker use, it will be difficult to enforce protective labor laws even after illegal immigrants are converted to legal temporary workers. Without a massive new enforcement effort, which is not likely in the present political climate, labor law violations are likely to accelerate.

13. It also must be decided if a guest worker program would be entered into by agreement with Mexico only or if other countries would be eligible. Denying this right to other countries might exacerbate our relations with them. Such an agreement might also strain our relations with Mexico if the Federal government assumes responsibility for the protection of Mexican or other workers and is unable to do so, or as with the bracero program, provides some protections it is unable or unwilling to extend to its own citizens.

14. A guest worker agreement raises other foreign policy issues. How will the program work in Mexico? How will workers be selected? In what occupations? What will be done to safeguard American wages and working conditions? Will the program lead to charges of bribery and corruption, as happened with the bracero pro-

gram? Will Mexico agree to help stem the flow of illegal immigrants out of Mexico into the United States in exchange for a guest worker program? Is it politically feasible for Mexico to try to prohibit undocumented workers from leaving Mexico? What would be the obligations of U.S. authorities to protect Mexican nationals? What would U.S. officials do if there were conflicts in interests between American and Mexican workers for jobs? What conditions would American officials protect for Mexican workers? What would be the implications of the United States offering protection to foreign workers that it would not extend to its own citizens, as happened with the Bracero program?

15. A temporary worker program raises important human rights issues. Temporary workers live and work in uncertainty, never knowing if their work permits will be renewed; they do not participate in domestic decision-making processes; serious human rights issues are raised by having people within the United States who do not enjoy full legal rights. If dependents accompany or join temporary workers, under what circumstances can these dependents work? To what services are they entitled? What priority do they get? Alternatively, do we subject ourselves to charges of human rights violations from the International Labor Organization and other international bodies if we deny family unification rights to temporary workers?

TEMPORARY OR GUEST WORKERS—THE EVIDENCE

The first guest worker program in the U.S. was initiated only months after this nation enacted the most restrictive immigration legislation in its history until that time—the Immigration Act of 1917. This temporary worker program was a response to strong pressures from the large agricultural employers of the Southwest. It was first described as a temporary farm program, but later it was expanded to allow some Mexican workers to be employed in nonfarm work. It was partly justified as being as part of the war effort and as a necessary part of national defense. It ended in 1922, because organized labor contended that the program undermined the economic welfare of citizen workers; and because many people believed that there were no labor shortages, only greedy employers who wished to secure economic gains from cheap docile workers. During the lifespan of this program, 76,000 Mexican workers were admitted to the U.S. One-half of these eventually returned to Mexico.

World War II generated manpower demands from the military services and defense plants that drained large numbers of workers from the U.S. agricultural sector. Accordingly, the U.S. government undertook negotiations with the Mexican government that resulted in a formal agreement in 1942 launching the Mexican Labor Program (better known as the Bracero program). This program continued in various forms until 1964. Under this program Mexican workers were afforded numerous protections with respect to housing, transportation, food, medical needs and wage rates.

The Bracero program generated income for its Mexican participants, but it had an adverse impact on citizen workers in the U.S., particularly the Chicanos who composed the bulk of the Southwestern agricultural labor force. At the program's peak, almost one-half million Braceros were working, spread over 27 states but mainly in the agricultural labor markers of the Southwest. This availability of Mexican workers significantly depressed existing wage levels in some regions; and modulated wage increases that would have occurred in their absence in other regions. The fact that Braceros were prime working-age male workers who were subject to the unilateral demands of their employer made them especially appealing to many employers. The Bracero program is seen as a significant factor in the rapid exodus of rural Chicanos between 1950 and 1970 to urban labor markets, where they were typically poorly prepared to find employment and housing.

Perhaps the most lasting effect of the Bracero program was its exposure of hundreds of thousands of poor Mexican workers to the wide array of economic opportunities that were available in the U.S. economy. According to Immigration and Naturalization Service data, official apprehensions of illegal Mexican entrants—a partial indicator of illegal immigration—rose during the early post-World-War II years to an annual peak of over 1 million persons in 1954 (bolstered by a special investigative effort that year). By 1958-1963, in the later stages of the Bracero program, such apprehensions had declined to the neighborhood of 30,000-40,000 annually. Following the program's termination in 1964, however, there was renewed sharp growth in such apprehensions to levels close to 1 million persons annually in 1977-1979. Many thousands of these illegal aliens were former Braceros. The illegal alien problem would have arisen with or without the Bracero program (the vast economic difference between the two national economies constitutes the main motive force behind illegal immigration) but the greater acquaintance with the U.S. conveyed by the Bracero program certainly contributed to the post-Bracero dimensions of the problem.

The Bracero program was unilaterally terminated by the United States in December of 1964. By then it was under strong attack from various U.S. groups, chiefly because of concerns over its effects on wages and employment opportunities for U.S. nationals.

The retrospective judgment of most scholars in the field is that illegal immigration was stimulated in the wake of the Bracero program and had an adverse effect on the wages and working conditions of domestic agricultural workers.

Europe admitted over 30 million workers outside permanent immigration channels for temporary employment between the mid-1950s and the early 1970s. The main driving forces were the high growth rates and the labor shortages of the 1950s and 60s, and the theory was that migrants could be imported to fill job vacancies and that when growth rates fell, these migrants could be returned to their homelands. This theory turned out to be false. As Max Frisch has put it "we asked for workers, but human beings came."

The main receiving societies in the European guest worker program were the nine EEC countries (excepting Ireland and Italy) and non-EEC Sweden and Switzerland. The sending countries included Ireland and Italy, Portugal, Spain, Finland, Greece, Turkey, Yugoslavia, Algeria, Sudan and Morocco. France and Germany recruited 70 percent of all guest workers had their greatest impact in Switzerland, where in 1970, nearly 35 percent of the workforce was foreign.

The European guest worker program reached its peak in 1970. Employers unable to attract domestic workers filed requests for foreigners at the local employment offices responsible for finding the foreign workers, arranging for travel, and collecting fees from employers to cover such expenses. By 1973 Germany employed 2.6 million guest workers; Switzerland 887,000; and Sweden 200,000. Remittances to labor sending societies topped $6 billion. Recruiting was abruptly halted in the wake of the 1973–74 energy crisis and at this point most European countries adopted a three-pronged strategy of coping with their populations. Migrants were encouraged to return (France instituted departure grants of $4,500 plus airfare for a family of four); bilateral assistance programs were offered to labor-sending countries to create more jobs in these nations; and, there was a concerted attempt to integrate those guest workers who remained.

None of these solutions were very successful. Some guest workers who overstayed their welcome responded to threats and bribes and went home, many stayed, raising such issues as: the rights of spouses and dependents to join already migrated workers, and the dependents' rights to seek employment in the country where the breadwinner was (or had been) temporarily employed. Many European nations eventually gave guest workers full legal rights, but it was a costly business, as in the mid-1970s domestic unemployment rates were rising and citizen workers resented what they saw as unfair competition for jobs from ex-guest workers and their dependents.

The net result of the European guest worker experience in the employing countries—is a decreasing foreign workforce (5 million) as there is no new recruitment of workers, an increasing foreign population (12 million) as dependents join ex-guest workers, and a host of economic, social and political problems that these nations have not yet resolved. For example, in Switzerland and France 30% of the foreign population is under fifteen and in both countries efforts to integrate these foreign youths into the schooling system and into the labor market have largely failed. Chronic language problems, high school drop-out rates and above average rates of unemployment in this foreign group all point to the failure of the integration effort.

Perhaps the most telling truth about the European experience with guest worker programs is that even if unemployment decreases and job vacancies reappear, few observers expect laborshort countries to revert to temporary workers again.

CONCLUSIONS ON TEMPORARY WORKERS

Faced with this battery of agruments from the experts, and this evidence from the experience of the U.S. and Europe, the Select Commission on Immigration and Refugee Policy voted down, by a large majority, the proposal that measures to curb illegal immigration should be accompanied by a large-scale foreign worker program. We support the main thrust of this decision, with the proviso, that if after illegal immigration is brought under better control it can be proved that more workers are needed in the U.S., it might be appropriate to admit them as part of a small scale temporary worker program. Such a program should have safeguards to make sure that citizen workers are not displaced. For example, employers should be certified to hire foreign workers only after they have tested the availability of American workers for the jobs they have to offer (along the lines of the current H-2 porgram).

In summary, a system of amnesty for undocumented aliens, together with the traditional family unification rights of permanent residents would automatically increase the legal flow of foreign workers into the United Sates from Mexico, continuing the safety value into the short-term future. If in subsequent years we establish a need for additional workers it would be appropriate to admit such workers as part of a small-scale, temporary worker program. These policy measures should be accompanied by an effort to provide U.S. managers with stronger motives to recruit, train and utilize unemployed American workers.

ECONOMIC POLICY COUNCIL IMMIGRATION POLICY PANEL SEPTEMBER 18, 1981

Dr. Sylvia Ann Hewlett, Executive Director, Economic Policy Council, UNA-USA.

Chairman: Jacob Sheinkman, Secretary-Treasurer, Amalgamated Clothing and Textile Workers Union, AFL-CIO.

Members: A. J. Ashe, Senior Vice President, B. F. Goodrich Company; Charles F. Barber, Chairman, ASARCO, Inc.; John Carr, Vice Chairman, Grumman Corporation; Jack G. Clarke, Director and Senior Vice President, Exxon Corporation; Aubrey L. Cole, Senior Vice President, Champion International Corporation; William C. Druehl, Group Vice President, Del Monte Corporation; Thomas Farmer, Prather, Seeger, Doolittle, & Farmer; Gaylord Freeman, Honorary Chairman, The First National Bank of Chicago; Richard W. Hanselman, President and Chief Executive Officer, Genesco, Inc.; Ruth J. Hinerfeld, President, League of Women voters of the U.S.; Robert C. Holland, President, Committee for Economic Development; Frederick Huszagh, Executive Director, The Dean Rusk Center, University of Georgia Law School; Harry W. Knight, Chairman, Hillsboro Associates, Inc.; Ray Marshall, Economist and former Secretary of Labor; Arthur Ross, Vice Chairman and Managing Director, Central National Corporation; Howard D. Samuel, President, Industrial Union Department, AFL-CIO; Richard J. Schmeelk, Executive Partner, Salomon Brothers; William W. Winpisinger, International President International Association of Machinists & Aerospace Workers; and Robert F. Wright, Partner, Arthur Andersen & Company.

Additional participants: Vernon M. Briggs, Jr., Professor, Industrial and Labor Relations, Cornell University; Kenneth J. Brown, President, Graphic Arts International Union; Edward Ennis, Former Chairman of the American Immigration and Citizenship Conference; Michael J. Piore, Professor of Economics MIT; Michael Scelsi, Director of Programs, Tolystoy Foundation; and Michael S. Teitelbaum, The Ford Foundation.

Senator SIMPSON. Thank you very much, Ray. I think you will well recall—I certainly do—how when these first proposals were presented to us as members of the Select Commission we received them with less than open arms. In fact, we were rather stunned as we were presented at that first meeting with some of these ideas.

But you know, that was of interest to me because we knew that we were doing some new things, or were at least proposing some new things. I know that in summary form I rejected many of the things which I eventually after 2 years embraced. Do you share that remembrance of it?

Mr. MARSHALL. Yes, and part of the process that you go through is that you see that there are no easy answers to the question. Therefore, you have to put them all in perspective and ask yourself, for example, if the damage done to low-income people, to minorities and women—the "secondary labor market"—is not greater by continuing the present situation than the problems associated with each one of these proposals.

That is the process that you go through in trying to come up with a package of proposals to deal with this very complicated question.

Senator SIMPSON. Indeed it is.

Mr. Shattuck—I will just sprinkle these around, I think—I know that you have some specific views, just as Mr. Fleming this morning did. His testmony was akin to yours in the sense of an indication of these very serious general civil liberties concerns about a new system of verifying authority to work in the United States.

Again, your principal concern is one of privacy and the possibility of governmental abuses. It would be helpful if you could furnish us specifics, examples of problems which might exist under various systems.

Could you do that briefly, and then for the record—the record will remain open for you to do that with some detail.

Mr. SHATTUCK. I will be glad to do that, Mr. Chairman.

Let me preface my answer to your question by making a comment that really should be made in the context of this issue, and that is that it is extremely difficult, there is no question. There are many competing values at work here. I do not want you to think that the perspective that we bring to bear on this means that we are blind to the various competing values.

The reason I laid out the three types of work authorization systems was that I think you can see there are different kinds of problems that exist with each one. The two that are really most seriously under consideration are first the data bank without a card and second the data bank with the card.

Clearly, the data bank with the card is the most serious in terms of its constitutional implications. But the data bank seems to be what the whole issue is boiling down to, in large measure.

Briefly stated, our concern as laid out in our testimony is the uses to which a data bank consisting of critical personal information about every member of the work force can be put.

The experience of the past 15 years in the increasing centralization of data about individuals, as one of the other witnesses stated—in the private sector it is going on at a furious rate—is that we are getting to a point where people's lives are going to be very largely controlled by decisions made based on personal data that is maintained about them.

In the testimony at pages 18 and 19, we list some of the very specific concerns that we have, the use of a population registry to single out convicted felons or people with arrest records who might not be eligible for employment. There is plenty of available evidence that arrest records are used to deter employment—in many instances it may even be a valid employment decision not to hire someone with an arrest record.

The data bank could be useful in efforts to combat welfare fraud. We already have examples of that in terms of the matching of computerized data systems that went on several years back between the records in HEW and records out in the private sector.

The matching of information is more feasible when you have a single identification system, a single number or a single identification that allows the information to be put in one place.

There are a number of other examples, the parent locator service, which has come into being through legislation, is used to identify runaway welfare fathers. Again, a perfectly valid social purpose which I think probably most Members of Congress and people in the outside world would support.

But do we really want to have the kind of centralized data bank that would be necessary to establish the worker authorization system put to these various other uses? Obviously, there are many other uses that are not as socially valuable and would be far less benign than the ones that I have stated. But the ones I have stated are the ones that are happening today.

So, if the Congress were to determine that this was the appropriate way to go for a work authorization system and it was necessary to build a personal data bank, it would be absolutely essential to prohibit any further uses of the data assembled in that bank.

In our view that is not going to be possible because it has not happened in the past 15 years.

Senator SIMPSON. I understand that, and at no time in our hearings or discussions, or as we processed all forms of legislation that has been presented so far to this date, and what will be the package that we will present, have we ever come to expanding the data base.

That is not to say that that could not occur, but certainly, the data base behind the social security card is awesome compared to what we have in mind, which would be a data base of the maiden name of the mother. The thing I have ever heard discussed in our proposals that have a data base is the maiden name of the person's mother and perhaps the birth date, that is it.

That would be what would be behind the number. That would be the most that could ever be obtained. So that, I can assure you, is the full feeling of the full subcommittee, the full feeling of the Select Commission.

Of course, the social security system data base, I think, is going to continue to expand as we find the system in what may be extremity in order to match deaths, and births, and age, and on and on. That will, I think, get more intense as we find the misuse perhaps, or these who are ill using the system.

But I want to get that clearly said, I think that is important.

Just one other question. Most countries in Western Europe have employer sanction laws and some form of verification system. Are you aware, or can you share with us specific examples of abuses that you describe as potential here, abuses that have occurred in Europe under the existing systems?

Mr. SHATTUCK. No, I have not done the kind of study that I think would be necessary to respond fully to your questions, but I will point out the obvious, which is that in Europe we do not have two things. The European countries that we are talking about do not have large populations of racial minorities in a variety of ethnic backgrounds who are also citizens, who are not in the same categories that most of the temporary workers, or guest workers are in.

So, the European system does not have the complicated racial and ethnic mix of the United States. For that reason, the risk that discrimination would occur against people who are citizens, as we would have in this country, I think, is minimal in the European setting.

Second, the European tradition is not necessarily the same as ours when it comes to issues of individual privacy and civil rights. So, I do not think that the structure of employer sanctions and work authorization systems that may exist there necessarily would bear on the kind of system that we would have here.

Senator SIMPSON. We had a witness the other day who had a very excellent background in that area, Mr. Mark Miller. You would be interested, I think, in some of his studies and views. The subcommittee staff will be pleased to share that with you.

We are finding a tremendcus increase in ethnic mixes in France and Germany that were certainly not there 10 years ago when the Gast Arbeiter program suddenly ballooned a little farther than was originally intended. We will be pursuing that in a temporary worker program hearing at some future time.

And there is the distinction, of course, of the nature of government and private rights that is very, very appropriate.

Mr. Secretary, in your written testimony you too refer to the civil liberties concerns, and we did all through the Commission hearings. I know that was a continual thing, especially as it had to do with the possibility of an upgraded social security card.

Your statement is rather a powerful one. You state that the alternatives could be more threatening to civil rights; and that is efforts to seal the border.

Could you expand on that idea with just the data that I shared with Mr. Torres and Mr. Huerta that, you know, we are at the point where people who do not favor employer sanctions or identifier systems without exception flee to one other solution, and that is increased and tougher existing enforcement methods. It is an interesting anomaly as we are led into that one. Just tell me your thoughts, please.

Mr. MARSHALL. Well, my belief about it is that we ought to do everything that we can to protect civil liberties and civil rights. I do believe, however, that the present system has important threats to civil rights and people are discriminated against now because they cannot demonstrate that they are in the country legally. Many people are forced to work scared and hard under the present system. I think that is bad. I think we are building up an "under class" of people who are easily exploited, and that it is impossible to solve that problem simply by stopping the flow of people. The physical job of sealing the border is immense and one also has to check on people who have come in with documents because, as you know, a sizeable part of the undocumented worker flow in the United States is people who enter with visitor or student visas. This would require a monumental search for people in order to find out if these people were here illegally. I think we can find a better solution than this.

You have to have some combination of policies rather than trying to build a wall or stop people at the border and interfere with the flow of people between the United States and other countries, especially Mexico. An important ingredient in any alternative program is effective employer sanctions. If you prevent illegals getting jobs you destroy the motive for people entering the country.

I think it is easy to see why the border patrol gets demoralized, why it is criticized for being inefficient. As you know, right now there are more people guarding the Capitol and Federal buildings here in Washington than guarding 6,000 miles of border and shoreline. They have 450 people, no more—unless they have added to their ranks since I last had a number.

They have inadequate equipment. The information system is not adequate and ought to be improved because with modern communications and information technology there is no excuse for this level of inefficiency.

But I think you hit diminishing returns in a hurry by trying to solve the problem in this manner.

There is a doctrine widely supported in the world that we have already gone past the point of no return and that we physically will not be able to stop the flow of illegals into the United States. We are told that by a lot of people in other countries.

I do not believe that, but I believe that we have to try. I think it is going to be difficult and that the balance of having an employer sanction system, amnesty, identification and some form of identification, is a lot better than trying to do it just through the enforcement procedures. All of that package is a lot better than perpetuating the present system with all of the future problems that you can see emerging as a result of the present system.

Senator SIMPSON. Let me ask you, how do you respond because of your long background in labor matters in your professional life, how do you respond to those who state that the employer sanctions and identifier systems should be a last resort measure, and that what we should be about now in Congress in our first attempt to curb illegal immigration, is, one, increase the resources of the chronically underfunded INS; two, make a concerted attempt to enforce the existing labor laws of the United States; and three, pursue foreign policy considerations that would reduce the "push factor" from sending nations.

Then, after a trial period, if we have not corrected the situation and illegal immigration is still excessive, then and only then should we come to the employer sanction and ID card, or verification identifier system.

What is your comment on that perspective?

Mr. MARSHALL. I think you have to develop these as a package. I do not believe that you should wait on employer sanction. My view is that employer sanctions and a more secure worker verification system, with all the problems associated with these policies, is the most powerful thing that you can do. It is more powerful than trying to improve border enforcement and all the rest of that because the main motive for illegal entry into the United States for immigrants—as contrasted with refugees—is to work.

If you go ahead with employer sanctions and a verification system I think that all of these issues of civil rights and civil liberties are very important, and that the system that you develop ought to try to deal with those to the maximum extent that you can. I believe after looking at the system that the Labor Department came up with for the Select Commission, that that one does minimize the problems of discrimination and violations of privacy which I think are real.

It also deals with another problem that I think is terribly important, and that is that you have to try to determine the impact of any new system on the existing structures. As you know, the social security people told us repeatedly—and I have heard that for years—that adding this burden to the social security system would cause it great damage.

Now, what commended the Labor Department system to me was that it would strengthen the labor market information system of the Labor Department in order to have that responsibility.

You would also not be using the social security number and files with the privacy issues involved there. You could have minimal files of information easily verified and separated so that you could never trace a worker through an employer, or an employer through a worker, and all of these safeguards could be provided through that system.

It would strengthen the Labor Department's information system not because of the information but because of the ability to get more computing power which the Department needs in order to improve the labor market information system to make the labor market work better—purely aside from the uses of that system for the control of immigration.

Finally, I agree completely, of course, with the idea that another way and a very important way—and I think this is where enforcement is very important—to take the motive out of this is to make it very difficult for employers to discriminate against people who are already here and who are forced to work scared and hard, by enforcing the labor laws. I think the work that the Labor Department did to try to show the effects of that demonstrate that you can do a lot with that, and that is extremely important.

Now, with respect to the push factors. On Mexico we deal with that in the paper. I think obviously it is in our interest for Mexico to develop. I think that the long-run solution is to reduce the wide differentials in income between the United States and Mexico—these differentials are sometimes as much as 10 to 1, and therefore they are powerful push factors.

I think the problem with waiting is that this problem is not likely to be solved this century. If you just look at the numbers that we present there, even with Mexico's oil money, that problem will not be solved.

As a matter of fact, when you start industrializing a country you accelerate the movement of people out, because the people who leave a country are not the most destitute, it is the people whose conditions are improving that are able to leave because you enhance their ability to move.

So, while it is in our interest for Mexico to develop, and we ought to do everything compatible with our national interest to cause that to happen, that will be done, in the main, by Mexicans. We are not going to develop Mexico, they are going to solve their own problems.

By the same token, we have the right to control our borders and I do not believe that we ought to negotiate that right away. I think we ought to keep Mexico informed, do everything we can that is compatible with our interest to help them promote their development, but the problem with waiting for that is, it will take a very long wait.

Senator SIMPSON. Thank you very much. I have a couple of questions of Mr. McCleary.

In your written testimony, sir, you suggest that any new verification system should be adopted in conjunction with, I believe your phrase is, "strict legislative limitations on the use of of the data base behind it." That has been discussed so thoroughly and importantly by Mr. Shattuck.

What if the only change made would be the change of the form of, say, a social security card if we were to do that? The data base would then remain the same and would actually be a greater data base than another type of identification that has been suggested to the subcommittee. Would any opportunities for abuse exist beyond those that already exist? Do you still believe that protections are needed in that instance?

Mr. McCLEARY. It would seem to me that in terms of using a system based on the social security system, when you have a larger data base than necessary, then you simply restrict legislatively or through the use of that data to the data which is necessary for the identification system.

But the social security number is already being used extensively at several levels by institutions already as a means of identification. Therefore it lends itself easily to that kind of identification system.

Senator SIMPSON. In your testimony too you stated that without a dependable mechanism for determining a potential employee's eligibility, employers would have to use their own discretion, are your words, in determining eligibility to work.

Mr. McCLEARY. Yes.

Senator SIMPSON. That might make employers feel insecure enough in their desire to avoid the possibility of sanctions to then avoid hiring those with certain ethnic backgrounds. That is a concern of this subcommittee.

Of course the administration states that their plan would protect employers. However, some feel that that protection would be achieved by eliminating most of the effectiveness of the system.

What is your comment on that?

Mr. McCLEARY. I identify with the former part of your statement in which sanctions on the employers that are of an economic nature would tend to cause them to be less open to run risks and therefore play the potential role of being more discriminatory in terms of whom they hire, simply to avoid susceptibility.

I do not believe that the proposal by the administration would adequately deal with the issue of discrimination when left to the employer. That is, when in the job market unemployment is high and the employer has the choice to hire, then he will act in a discriminatory manner on the basis of protecting himself from any liability. That would be an extremely vulnerable position for us, being a pluralistic society.

Senator SIMPSON. Indeed it would, I am sure of that.

Thank you so much, I appreciate your testimony. We will be looking forward to hearing it as we get into some of those other issues that are coming up over the coming weeks.

Thank you very much, nice to see you again too, Mr. Shattuck, Ray.

Next we have Mr. Roger Conner, executive director of the Federation for American Immigration Reform, the organization known as FAIR; and Mr. Sidney Rawitz, attorney and long-time observer of the scene in this area.

So, please proceed.

STATEMENT OF ROGER CONNER, EXECUTIVE DIRECTOR, FEDERATION FOR AMERICAN IMMIGRATION REFORM

Mr. CONNER. Thank you, Mr. Chairman.

You have heard a great deal in the last few hours, days, weeks and months about the need for sanctions, identification, and enforcement.

What we are really talking about today is a system to insure fairness in the hiring of workers, job applicants. That is why we call it a fair-hiring system.

The chairman has previously listened to our views on the desirability of a fair-hiring system with grace and patience. So, rather than repeat those, let me just offer here four reasons why we find a call-in system an extremely attractive element of a fair-hiring system.

Reason No. 1: This is the system which protects best against the person who is prepared to hire illegals and then lie about whether he checked identification. And the reason is that the Government has a record of every employer who did check and it is the Government, not the employer, which verifies that person's eligibility to work.

The second benefit of a call-in system is that it is the system which best protects employers who comply in good faith. Why is that? Because the employer also gets a record from the Government that he checked. A valid record would constitute a defense against prosecution.

The third value of the call-in system is, that it is the system which protects best against discrimination. Why is that? Because it provides the employer with a separate incentive to check every applicant for employment because failing to check can, in itself, incur a difficulty.

It also gives the employer confidence that he can hire any verified person who applies, regardless of his race, color, nationality, accent, appearance, or anything else that might cause him to be suspicious.

The fourth reason. It is the system that best minimizes the burden on the employer because it is the government, not the employer, who decides whether that applicant for employment is entitled to accept employment.

In our view, a call-in system moves us—in Ambassador Ascencio's words from last Wednesday—into the modern era. It takes full advantage of modern advances in technology which now make it possible, at a modest cost really, to provide a system which is fast, which is reliable, and which is efficient.

The other point I would add is that a call-in system can be combined with a card; it can be combined with existing documents; it can be combined with a simple affirmation that the person is entitled to take employment. But it is an extremely attractive component of any fair-hiring system that we want to have answers to some of the objections you have heard earlier today.

The last thing I want to say, Mr. Chairman, is that you have heard much criticism of fair-hiring systems today. It is fairly easy to criticize any of these proposals because no system is perfect.

But the status quo is not perfect either. There are a score of combinations of fair-hiring systems you can devise which are far superior to the status quo—a status quo which fosters discrimination, hurts poor workers, costs taxpayers hundreds of millions of dollars and undermines the respect for law which is so essential to the individual freedom which we in this country so prize.

So, I think it is time for those who would criticize fair-hiring systems to come back and tell us why the status quo is preferable to the fair-hiring systems that have been proposed, rather than simply taking the easy course of shooting darts at those who are prepared to get in and try to come up with something that works.

Thank you, Mr. Chairman, that is all I wanted to say. You have my prepared remarks.

Senator SIMPSON. Thank you very much. They will be entered into the record without objection.

[The prepared statement of Roger Conner follows:]

PREPARED STATEMENT OF ROGER CONNER

Thank you, Mr. Chairman and members of the Subcommittee, for this opportunity to testify before you on employee eligibility verification systems. I am Roger Conner, Executive Director of the Federation for American Immigration Reform (FAIR). One of FAIR's major goals is the control of illegal immigration to the United States. This goal can be accomplished only through efforts on a number of fronts, including increasing enforcement of immigration laws at the borders and in the interior of the country, having more efficient administration and monitoring of nonimmigrant visitors to the United States, and removing the principal incentive to come to this country -- the easy availability of jobs. It is this last point which we address today.

Introduction

Last Wednesday, this Subcommittee heard forceful testimony from many sources on the need to prohibit the employment of illegal immigrants. Attorney General William French Smith said that such a prohibition is the only remaining statuatory tool against illegal immigration which is not being employed.

Such a prohibition, known as employer sanctions, is not a panacea for all our illegal immigration problems. But it is a vitally needed step which me must make. At present, our immigration law contains a contradiction: it is illegal for an illegal immigration to take a job in the United States, but it is not illegal to hire an illegal immigrant. The so-called "Texas Proviso" in Section 274(a) of the Immigration and Nationality Act states that "employment (including the usual and normal practices incident to employment) shall not be deemed to constitute harboring." (8 U.S.C. 1324(a)).

This proviso, inserted at the request of Southwestern agricultural interests in the 1950's, has hampered the enforcement of immigration law ever since. Courts seeking to enforce the spirit of our immigration laws and to protect American workers from competition through illegal immigration have sought ways in which they could characterize an employer's actions as being beyond the normal incidence of employment. *U.S. v. Mount Fuji Japanese Steak House*, 435 F. Suppl 1194 (E.D.N.Y. 1977), is a good example of this tendency. Other courts have found concealment or sheltering of an illegal immigration, rather than employment, to [illegible] the primary act of an employer. Concealment or sheltering is a separate unlawful act. *U.S. v. Lopez*, 521 F.2d 437 (2nd Cir.); *cert. den.*, 423 U.S. 995 (1975), illustrates this tendency.

One remedy for this situation would be for Congress simply to eliminate the Texas Proviso from the INA. Yet harboring an illegal immigrant is a felony, and prosecutors could well be reluctant to prosecute first-time offenders or small employers under such a serious charge. And in many cases in which employment is the only tie between the employer and illegal immigrant employee, "harboring" could be an overstatement of the nature of their relationship. FAIR would recommend that instead of simply removing the Texas Proviso Congress should pass an employer sanctions or fair hiring provision that explicitly stated that knowing employment of an illegal immigrant was a separate offense under the law.

Considerations

An employer sanctions law could be written without any specific enforcement provisions. Even such a law would have real value. Most obedience to laws is voluntary, without coercion. We would expect that most employers, when informed that the employment of illegal immigrants was no longer legal, would voluntarily attempt to hire only those who were legally eligible to work in America. In addition, the Immigration and Naturalization Service could use such a law as a tool to deal with the most blatant, large-scale employers of illegal immigrants, with whom it is already familiar.

Yet there are serious objections to an employer sanctions law which must be seriously considered, and which would suggest that we need more than an employment prohibition without proscribed enforcement provision. Employers, for example, should not be liable for honest error in the hiring of illegal immigrants whom they could not be expected to identify. Employers must be protected from prosecution for the non-negligent, unknowing employment of illegals. Few employers are able to discriminate between an those aliens eligible and ineligible to accept employment.

A second consideration is that an employer sanctions law should not be an enticement to discrimination. An employer should not feel that the safest course would be to shun employees who seem "foreign," or that the law allows such a course.

Employer sanctions must be effective enough to remove illegal immigrants from the labor force; they must allow the INS to prosecute employers who violate the prohibition; they must protect employers from wrongful prosecution; and, finally, they must not foster discimination against minority workers. All of these considerations move toward a single conclusion: an employer sanctions law should include a scienter requirement. Prosecution under such a law should require that it be proven that the employer knew or could have known that the employee was not legally eligible to take a job in the United States.

The key toward implementing a scienter requirement is a uniform, simple, and effective procedure with which the employer and employee can comply. If the employer and employee do comply with the requirements of the system, hiring can be done with confidence, without discrimination, and without danger of prosecution for honest mistakes. If the employer does not comply with the requirements of the system, he can be deemed to have hired a person in reckless disregard of the law, and can be charged with constructive knowledge of an illegal immigrant's lack of eligibility.

Our task, then, is to design a system that provides employers with verification of employee eligibility at a least cost, with the highest effectiveness, with the least burden on employers and employees, and with sufficient safeguards to prevent fraudulent entry into the system.

Alternatives

There have been a number of attempts in recent years to design a verification system. Most systems are directed at the the most vulnerable point, the point at which governmental involvement is least intrusive, the point of hire. This minimized disruption of the workplace and provides the least exposure for the employer and the least inconvenience to the prospective employee. The system has been called by Senator Walter Huddleston a Fair Hiring Procedure, and I shall adopt that terminology.

Verification, or Fair Hiring systems generally fall into five categories:

1) simple prohibition of the employment of illegal immigrants (sometimes called "good faith reliance," "naked sanctions," or "passive reliance").

2) affirmation systems (in which an applicant signs a statement that he or she is eligible to accept employment)

3) existing documents systems (in which an employer looks at one or more existing documents in an attempt to verify eligibility);

4) work permit or card systems (where a special type of permit or card is issued to those eligible to work); and

5) electronic verification systems (in which the validity of a personalized number, such as the Social Security number, is verified by a government agency, as through a telephone "call-in system").

These five systems are not mutually exclusive, and many observers feel that a combination of systems, or a hybrid system, would enhance the effectiveness of the overall program. The Reagan Administration, for example, has proposed a combination of the affirmation and existing documents sytems. Senator Huddleston and others have proposed a phased-in system in which affirmation evolves into a combination work card and call-in system. I shall later elaborate on a third hybrid which FAIR would recommend for serious consideration.

All of these five systems, except a call-in system, require employers to determine whether applicants are eligible for employment or whether documents presented as evidence of eligibility are valid. Employers are not generally trained to detect counterfeit documents; this presents a problem in keeping the program effective and in assuring employers that they will not be prosecuted for inadvertant mistakes. These systems also present prosecutorial difficulties in proving either that employers did not check required information or knew that presented identification was invalid. Only a call-in system, which relieves employers of a verification role, solves these problems without additional burden or cost. Yet a call-in system is the only one which is largely untested anywhere in the world.

Naked sanctions systems have been adopted in several states, including California (Cal. Labor Code 2805), Vermont (Vt. Stat. Ann. 21-44a), Montana (Rev. Code Mont. 41-121), Massachusetts (Mass. Gen. L. Ann. 149-19(c)), Kansas (Kan. Stat. Ann. 21-4409), Florida (Fla. Stat. Ann. 448.09), Delaware (Del. Code Ann. 19-705), and Connecticut (Conn. Stat. Ann. 31-51(k)). Very few prosecutions have been made under all state statues, although the United States Supreme Court upheld the California statute as a constitutional exercise of state police power against a challenge claiming it was preempted by federal inaction (DeCanas v. Bica, 424 U.S. 351 (1976)).

Some immigration officers, as I have noted, contend that they can enforce a naked sanctions law, since they know which employers routinely hire illegal immigrants. They note that prosecutors routinely press charges in other crimes with scienter requirements. And such a system would cost the government little or nothing to implement. But considerations of protection both for employers and for minority applicants have led FAIR, as I stated above, to recommend against naked sanctions except as a first phase in a hybrid, phased-in program.

The second type of system, affirmation of eligibility, is used around the country for various purposes. Affirmation could be made a part of normal personnel papers, either application papers or income tax forms, which are routinely filled out. Many standard application forms now in use include questions of nationality and of immigration status for those not citizens. Such statements could be made under penalty of perjury, and applicants could be told that documents would be forwarded to the Immigration and Naturalization Service for examination. The States of Virginia and Maine use affirmation systems for employment (1950 VA. Code 40.1-11.1; Main Rev. Stat. Ann. 26-871). The County of Los Angeles uses such a system to screen ineligible aliens from welfare rolls; researcher David North estimates that the County saves $46 million a year through the use of affirmation. The affirmation system fails, however, to screen out anyone who is willing to lie under oath and who is not already known to the INS as illegal.

The third system model, examination of existing documents, is also in limited use today. In this system, employers are reuiqred to examine one or more documents presented by job applicants. Documents sued for this purpose include birth certificates, drivers licenses, INS documents, Selective Service documents, and passports. Usually an employers is required to examine in "good faith." Such an examination is mandated in the regulations implementing the Farm Labor Contractors Registration Act (7 U.S.C. 2041 et. seq.) before hiring a farm worker (29 CFR 40.51(p)). The State of New Hampshire requires an alien to show an INS document (N.H. Rev. Stat. Ann. 275-A:4-a). The Commonwealth of Puerto Rico requires a showing of any of several documents as "evidence of legal residence in the United States" (Laws of Puerto Rico, Ann. title 29, 153(a)(3)).

The existing documents model is another low-cost, but low-effectiveness system. Existing documents are easily forged, and employers cannot easily tell forgeries from genuine documents. Most systems leave no evidentiary trail that an employer actually examined the documents. The Reagan Administration's proposal contains another weakness of this system. Of the four documents which can be used to demonstrate work eligibility, two (drivers licenses and Selective Service documents) are required by law and court decisions to be provided to illegal immigrants in some states, such as Arizona.

The fourth system, work permits or cards, is not yet in use in the U.S. But many other countries, such as Mexico, France, Germany, and Hong Kong, use such a system. Under this model, the government would provide each worker with an individual permit or card to demonstrate his or her eligibility to accept a job. The cards are made counterfeit resistant by including personal data (either encrypted or plainly read), or by adding a picture or a fingerprint. The employer must examine the permit or card before hiring the applicant. In some proposals, the employer notes some of the information on the card as evidence that it has been examined. Some systems propose the use of a reissued, counterfeit resistant Social Security card.

A card system is more costly than other systems which I have mentioned, but offers substantially more security and effectiveness. The permit would be more difficult to obtain than existing documents, and would be more difficult to tamper with. Although such a system is in use in modern democratic countries, some observers find a potential for governmental misuse in it. A common complaint is that such a system would create a national identity document. Such a potential can be guarded against by limiting the use of this card to the point of work application or hiring, and by banning any other use of the card for identification. A card system, without an additional reporting mechanism, does not ensure that an employer examined the card, however. And, although examining a single type of card is much simpler than examining a many different kinds of identification, a card system relies on the employer to determine whether the card is valid -- a task which many business organizations have resisted.

The last and most modern system, electronic verification, solves many of these problems. Electronic technology has only recently become available to provide a decentralized and efficient system. In this model, a individual identifier, such as a Social Security number, becomes the secure or verified element. Coded information could also be used. The employer would transmit the required information to a government agency which would examine it and verify it against its records. If the number is valid, the agency informs the employer. A transaction code can be used to make of record of the verification, much the same as large credit card purchases are verified. If the information is inaccurate, or the number submitted is invalid or belongs to an alien ineligible for employment (many aliens ineligible for employment have Social Security numbers for bank accounts, stock transactions, or drivers licenses), the employer is informed.

Electronic verification removes some difficulties associated with other systems. An employer is not required to verify an applicant's eligibility: a more expert body, the government agency, is reponsible for that job. The employer merely acts as a conduit for information. This is also the only system which provides a record fo the verification transaction, protecting the employer both from inadvertant governmental prosecution and from later discrimination suits. With such a transaction record, the employer has a presumption of compliance with the law which can be quickly and easily verified. And the system also facilitates examination for all applicants, because a transaction code is needed for the employer's records, eliminating a source of possible discrimination against minority workers.

Drawbacks to the system are its costs (probably higher than for other systems) and the necessity of dealing with the government for each person hired. Yet new technology is reducing the cost of such transactions quickly. Most of the costs of such a call-in system are now in the labor required to operate it, rather than in the technology). And the more automated and decentralized operating such a system is, the less chance there is of governmental inefficiency and error. Such a system can be structed to minimize fears of governmental abuse and invasion of privacy. In a call-in system, access is only through a system terminal, and only information input would be the individual identifier, and the only information returned would be the validity of the number. The use of the system for any purpose other than verification of employment eligibility could be prohibited by law.

FAIR'S Proposal

Let me outline one type of call-in system that could be effective, efficient, decentralized, and far less costly than others which have been proposed. This Fair Hiring system uses Distributed Data Processing, the typical format for most modern business computing systems. Most of the actual work is done in regional centers around the country. Most system operations would be automated for those with touchtone telephones and computerized personnel systems; for others, operators could handle call.

The system would simply check the Social Security numbers of applicants. An employer would obtain the applicant's Social Security number, dial a toll-free telephone number, and give the Social Security number to the government agency. For discussion purposes, let us postulate that the Employment Security Administration of the Department of Labor would be responsible for verification. Since only one quarter of the possible combinations of Social security numbers have been issued, the agency would first check to see whether the number had been issued or if it were impossible. If the number were possible, it would be checked against a list of known fraudulent or misused numbers. If it were not on the list, the employer would be told it was valid and would be given a transaction code. If it were either impossible or on the fraudulent list, the employers would be so informed. The transactions and the codes issues would be recorded and sent to a central office periodically, and at the same time the list of bad numbers would be updated.

At the central office, the computer would compile the list of bad numbers from reports from the regional offices and other sources and record each day's transactions. It would scan transactions to identify numbers that were being used repeatedly, and would bring those to the attention of the agency for further checking.

The equipment required for this system is already in general use. Banks use telephone bill payment systems; large employers use computers connected to tax agencies. The type of equipment needed for such operations is not particularly sophisticated, and is quite inexpensive. One computer system which could process such information and grow with the system's needs is the IBM "System One," a relatively small mini-computer which has a large storage capacity. To equip a regional office with one of these systems would cost between $20,000 and $30,000, depending on the size of the region. The Central system would probably cost less than $75,000. Programming and labor costs would at least double the costs for the equipment each month. Even so, the cost for such a national system should not exceed $100 million a year, including twenty regional offices and a very large storage capacity.

We do not suggest that such a system is the best method available to verity work eligibility. But it demonstrates that a system which meets all of our requirements is not only possible, but also practical. Employer sanctions enforcement need not come all at once. It can be phased in. Even naked sanctions does some good, can be started right away, and has low cost. Sanctions does not have to apply to those currently employed; it need apply only to new hires, and so is also phased in gradually among employees. If a call-in system is introduced, it also can be phased in, with a limited scope which can be later expanded if it proves necessary. And a counterfeit-resistant machine-readable card can be gradually introduced as a way to remove existing fraudulent Social Security Cards from circulation.

Even the most elaborate and most expensive system which has been proposed for enforcement, however, is much less expensive for our society and for direct Treasury costs than continuing to countenance the displacement of hundreds of thousands, perhaps millions, of American workers from the workplace by illegal immigrants.

Mr. Chairman, in the field of employer sanctions we have seen much emotion, but little motion. It has been eight years since Congressman Peter Rodino's first employer sanctions bill passed the House of Representatives. FAIR feels that employer sanctions is a tool vitally needed to curbe illegal immigration. And we feel that Fair Hiring procedures are vital to a workable system of employer sanctions.

Fair Hiring procedures are practical, and they will be effective. They require little more in real terms than the Reagan Administration has already proposed. But they offer us a chance to eliminate the single greatest cause of illegal immigration, the easy access to American jobs.

The House has repeatedly demonstrated its willingness to establish employer sanctions and Fair Hiring procedures. The time has come for the Senate to join with the House in legislating such sanctions and procedures. We look forward to this Subcommittee's recommending a fair and workable system of sanctions and procedures. Thank you again for the opportunity to appear before you today.

Senator **SIMPSON**. Mr. Rawitz, please.

STATEMENT OF SIDNEY B. RAWITZ, ATTORNEY

Mr. **RAWITZ**. Thank you, Mr. Chairman.

As a matter of historical background I would like to mention that 30 years ago, in 1951, the U.S. Senate passed an employer sanctions law as an amendment to the bracero law. However, this worthy effort by the Senate did not survive the joint conference and was rejected by the House. That law which passed the Senate provided it would be a felony offense for an employer to hire an alien who was in the United States illegally.

I proceed on a fundamental premise. Employers in general hire illegal aliens because of economic incentives and because it is not illegal to do so. A statutory declaration by Congress for the first time stigmatizing as unlawful the employment of illegal aliens will, I believe, ipso facto prove to be efficacious.

I share the view that the great majority of employers in the United States are law-abiding persons who will seek conscientiously to comply with such a law once it is enacted.

Mr. Chairman, I propose a plan which I believe to be simple, fair, and nondiscriminatory, and it does not call for the use of a national identification card.

As in the administration's plan, an employer will be obligated to make a good-faith inquiry as to whether an employee or an applicant for employment is eligible to work.

Each employee will be asked to sign a form in which he supplies his name, and date and place of birth, and then declares whether he fits into one of four categories: namely, whether he is a native-born U.S. citizen; a naturalized U.S. citizen; a lawful resident alien; or an alien otherwise eligible to work.

When the employee declares himself as a native-born U.S. citizen he will be taken at his word; no documentary corroboration will be required.

When he asserts he is a naturalized U.S. citizen he will be asked to present a certificate of naturalization within a reasonable period of time; he may go to work in the meantime.

When he asserts that he is a permanent resident or that he is an alien who is eligible to work, he will be asked to furnish official documentation.

I call to your attention that the employer can obtain explanations of immigration status from a booklet that INS publishes on documentary requirements for aliens in the United States, form M-97. This booklet contains drawings and illustrations.

Evidence that the employer has obtained a signed statement in writing from the employee and has made the required notations on the form will be deemed prima facie proof that the employer has made a good-faith inquiry, as provided in the statute.

I submit the outlined procedure will not impose an unreasonable burden on either employer or employee. The great majority of the work force is made up of native-born citizens for whom no documentation will be required. For naturalized citizens there will be a minimum of inconvenience in the requirement to present his naturalization certificate.

Both permanent resident aliens and aliens whose employment is authorized are required by law to carry evidence of their immigration status on their persons. Thus, there is no new burden placed upon them.

We can expect that fraud will be perpetrated whatever plan is finally selected, but there is no reason to think that the volume of fraud under this plan will be appreciably greater than under a national identification card program.

There are two deterrents that can operate to minimize false claims to citizenship. First, a warning can be printed on the form that a misrepresentation of citizenship is punishable as a felony under 18 U.S.C. 911.

Second, experience has taught that illegal aliens, and particularly those of Mexican nationality, are fearful of putting things in writing and signing their names to official-looking forms. They are more likely to walk away.

I suggest that enforcement of an employer sanctions law can be strengthened if INS officers are not only authorized to inspect the signed forms maintained at the place of employment, but also allowed to interrogate then and there employees as to whom there is a reasonable basis for suspicion.

We can expect that INS officers will concentrate their efforts on those industries and particular places of employment known to attract illegal aliens or with records of having repeatedly hired illegal aliens.

I would just like to read my closing statement, it is a short paragraph, if I may.

Senator SIMPSON. If you would, sir, please.

Mr. RAWITZ. I wish to reiterate my belief that enactment of an employer sanctions law will in itself prove to be a powerful impediment to the employment of illegal aliens.

In the District of Columbia there have been numerous apprehensions over the years of undocumented aliens employed by Blackie's House of Beef. In Virginia, where a Blackie's branch also operates but where there is a State employer sanctions law, no violations have been uncovered.

Thank you, Mr. Chairman. You have a copy of my prepared statement.

Senator **Simpson**. We do, Mr. Rawitz. Thank you very much.

[The prepared statement of Sidney Rawitz follows:]

PREPARED STATEMENT OF SIDNEY B. RAWITZ

Mr. Chairman. I appreciate this opportunity to present my views.

My name is Sidney B. Rawitz. I was with the Immigration and Naturalization Service for over thirty years. Among the varied positions I held with INS were those of Chief Immigration Judge and Associate Commissioner, Enforcement. After retiring from INS, I served for nearly five years, from 1974 to 1979 as Counsel to Senator Eastland's Subcommittee on Immigration. Since January 1979 I have been engaged in the private practise of law at 1800 Massachusetts Avenue, N.W. specializing in immigration and nationality matters.

It is not generally known, and few may now recall, that thirty years ago the United States Senate saw fit to pass an employer sanctions law as an amendment to the bracero law. This worthy effort by the Senate did not survive the joint conference where it was rejected by the House and eliminated from the bill enacted into law.

It is somewhat ironical to reflect that this undertaking by the Senate in 1951 was fully consonant with the desires of the Government of Mexico which during that period had been urging the United States to tighten its control of the Southern border and stem the flow of illegal entrants.

The attempt to pass an employer sanctions law was unsuccessfully renewed in the Senate in early 1952 during the second session of the 82nd Congress in the form of an amendment to S.1851, a bill which gave birth to the famous or infamous Texas proviso. S.1851 was signed into law on March 20, 1952 (Public Law 283), and its provisions along with the Texas proviso were incorporated into the omnibus immigration bill which became the Immigration and Nationality Act.

So much for history. I turn now to the main body of my remarks.

I

I proceed on a fundamental premise. Employers, in general, hire illegal aliens because of economic incentives and because it is not illegal to do so.

A statutory declaration by Congress, for the first time stigmatizing as unlawful the employment of illegal aliens, will ipso facto prove efficacious. I share the view that the great majority of employers in the United States are law-abiding persons who will seek conscientiously to comply with such a law once it is enacted.

II

Fair and effective enforcement of an employer sanctions law can be achieved without mandating a national identification card. To reach this objective, I propose the following plan.

1. The statute will impose on every employer an obligation to make a bona fide inquiry into whether a person he employs or continues in employment is a citizen or an alien; and, if an alien, whether he is lawfully admitted to the United States for permanent residence or is authorized to accept employment.
2. Each employee or applicant for employment will be required to sign a statement in writing on a form prescribed by the Attorney General and in conformity with regulations promulgated by the Attorney General that such person is a citizen of the United States, or is an alien lawfully admitted for permanent residence, or is an alien authorized to accept employment.
3. The form will require in addition to declaring citizenship or alienage that the signer supply his date and place of birth.

a) When he claims U.S. citizenship and asserts he was born in the United States, no further proof will be required. The native-born claimant will be taken at his word.

b) When he claims to be a naturalized United States citizen, born abroad, he will be asked to produce his certificate of naturalization within a reasonable period of time, during which period he may be employed. Upon production, the employer will compare the name and photograph and note on the form the certificate number and the place and date of naturalization.

c) When he asserts that he is an alien lawfully admitted for permanent residence, he will be asked to produce his alien registration receipt card (green card) within a reasonable period of time. Upon production, the employer will be obliged to ascertain whether the individual bears a reasonable likeness to the photograph and to make a note of the alien registration number and the date of birth shown on the card.

d) When he asserts that he is an alien who has been authorized to accept employment, he will be asked to present proof thereof, and the employer will note on the form the nature of the evidence presented. (Note: Employers can obtain from INS a booklet, Form M-97, entitled Documentary Requirements for Aliens in the United States containing illustrations and explanations.)

4. Evidence that the employer has obtained a signed statement in writing as described above will be deemed prima facie proof that the employer has

made a bona fide inquiry as provided in the statute. The signature of the employer or his agent will also be required.

5. The Attorney General will prepare the forms for use of employers and the forms will be furnished upon request. The executed forms will be maintained at the employer's place of business and will promptly be made available at the request of the Attorney General for his inspection. The Attorney General will be entitled to take custody of individual records, as he deems necessary, for use in any investigation or proceeding.

III

This plan has a number of easily seen advantages:

1. It allows for a minimum of paperwork and bureaucracy. It will not stimulate a huge, new inflow of paper to Washington with consequent indexing and storaging problems. The forms will be maintained locally by each employer but, as noted above, will be available to INS agents.
2. It will not impose an unreasonable burden on employers. Employers who make a bona fide effort, as defined in the statute and regulations, to determine whether a prospective employee is entitled to work in the United States will be protected. In no event would violations be sustainable unless the employer were shown to have hired aliens with knowledge they were in the United States illegally or were not authorized to take employment or

unless the employer willfully failed to comply with the requirements prescribed by the law and regulations.

3. The plan will be relatively economical to operate and can be implemented quickly or with little delay. In contrast, a program calling for a national identification card will be costly (perhaps $1 billion), will take considerable time before attaining a state of operational readiness, and, to the extent participation by the Social Security Administration is demanded, will generate hostility or at best a lack of cooperation and grudging compliance.
4. It is expected that frauds will be perpetrated whatever plan is finally selected and put into operation. (The INS is always combatting frauds wherever it looks.) However, there is no reason to believe that the volume of fraud resulting from adoption of the proposal under discussion will be appreciably greater than that generated under a national identification card program. In respect to the latter, it should be observed: (a) aliens heretofore have shown the ability to acquire or buy U.S. birth and baptismal certificates with relative ease, (b) evidence is lacking that technology exists to yield a counterfeit proof card or one immune to photo substitution, which is at the same time affordable in a budgetary sense and capable of verification under field conditions, and (c) personnel who would be assigned to screen documentation in connection with issuance of a national identification card will be mostly low level without proper skills or background and with inadequate training.

5. The proposal under discussion would negate the opposition of those civil libertarians who react to the idea of a national identity card by conjuring up visions of a police state. For the most part, it should also still the cries of those who contend an employer sanctions law would result in discrimination against Hispanics and other minorities.

IV

It is highly pertinent to ask: To what extent is the outlined plan feasible? What elements can be put into it to insure a reasonable chance of success?

1. From the perspective of the employer, the opinion has already been expressed, and is here reiterated, that as the great majority of employers are law-abiding the enactment of an employer sanctions law (with accompanying publicity) will in itself prove to be a powerful deterrent to the hiring of illegal aliens.
2. From the perspective of the illegal alien, at least one powerful deterrent will be at play. Experience in dealing with illegal aliens has taught that they will shy away from putting things in writing or signing their names. This has been particularly true of Mexican aliens, as many immigration officers will attest. Hence, it is reasonable to expect that a large percentage of illegals will walk away from the intended place of employment rather than sign an official government form containing misstatements.

3. For the more sophisticated illegal alien who is more readily given to deceit and less likely to withhold his signature from the form, there would be the warning printed thereon that misrepresentation of citizenship is a felony under 18 U.S.C. 911, punishable by up to three years imprisonment and $1,000. The illegal alien who misrepresents his immigration status, e.g., by claiming to be a lawful resident alien, may not be covered by any existing criminal statute, and it may be thought desirable to enact such a penal provision. It can be anticipated in both instances that at least in aggravated cases there will be prosecutions.
4. From the perspective of the Immigration and Naturalization Service, the agency which presumably would be charged with the duty of investigating violations, efforts could be concentrated on those industries and particular place of employment known to attract illegal aliens or with records of having previously and repeatedly employed illegal aliens. The INS agents should be authorized by law not only to inspect the signed forms maintained at the place of employment but also authorized to interrogate then and there employees whose forms are incomplete or irregular on their face, or as to whom the agents have a reasonable basis for suspicion.

V

It is suggested that these additional considerations be taken into account in drafting an employer sanctions law.

1. The statute should hold culpable not only employers and their agents who commit violations but also (a) persons who for a fee knowingly refer illegal aliens for employment, and (b) officials or representatives of labor organizations who knowingly refer illegal aliens for employment. The involvement of employment agencies and some labor unions in these activities is well documented.
2. A penalty for a first-time violation should be relatively moderate. Subsequent violations by the same offender should be made subject to harsher penalties.
3. The law should authorize the Attorney General to seek injunctive relief in U.S. District Courts against large-scale and repeated offenders.
4. The statute should make it clear that federal preemption over state laws is intended. This appears to be desirable to bring about uniformity in enforcement throughout the United States.
5. If fears persist regarding the potentially discriminatory impact of an employer sanctions law, a provision can be included authorizing the Attorney General to seek redress in a civil action in a United States district court in behlaf of any individual who was refused or discharged from employment because of his national origin. The actual need for such authority is debatable, however, since it would be in addition to separate powers granted to the Equal Employment Opportunity Commission to redress such violations under the Civil Rights Act of 1964.

VI

The plan I am offering is similar to the administration's proposal in not being dependent for its implementation upon a national identification card. However, to the extent that it is a simpler plan it facilitates enforcement of an employer sanctions law.

The great majority of the working force in the United States consists of native born U.S. citizens. They would not be burdened with a requirement to produce documentary evidence of their birth in this country. Nor would employers be burdened with the obligation to examine such evidence. As previously expressed, I do not believe that under this system frauds will be appreciably greater.

Under the administration's proposal an employer is not subject to criminal penalty unless he employs four or more workers. I see no reason for exempting smaller establishments. If we allow the exemption, we give away the element of deterrence that would otherwise operate against all employers, small or large.

As stated, I regard as a valuable aid to enforcement of an employer sanctions law authorization permitting INS officers to inspect relating records at various places of employment and, when reasonable cause exists, to interview employees concerning their declared status. The administration's plan would authorize inspection of records but does not contain the specific additional authority permitting interviews.

I agree with the administration that acceptable proof of eligibility to work may be satisfied by presenting documentation issued by INS, such as a permanent resident alien card or temporary worker visa, provided the employer is assisted by the government in educating himself concerning such documentation.

I do not believe that the administration has given sufficient thought to its further proposal that proof of eligibility to work may be satisfied by presenting any two of the following documents.

Birth Certificate
Driver's License
Social Security Card
Selective Service Registration Certificate

Birth Certificates are easy for imposters to obtain, usually by writing for the certificate in the assumed name, and are relatively easy to counterfeit.

Drivers'Licenses. Very few states require identification of any kind for issuance of drivers licenses. Only when there is a question of whether the applicant meets the minimum age level will some jurisdictions ask for a birth certificate.

Social Security Cards. Social Security cards are easily counterfeited. Cards issued prior to March 1974 did not require screening of applicants for evidence of citizenship or entitlement to work.

Selective Service Registration Certificates. My understanding of the Seclective Service law is that it requires both resident aliens and illegals to register. On the other hand, non-immigrant aliens maintaining status are exempt from registration.

To use a figure of speech that seems applicable, the administration's plan is built on a deck of cards.

In closing, I call to the Subcommittee's attention a project undertaken several years ago by the Los Angeles INS District Office known as "Operational Cooperation." This involved the voluntary participation by employers who sought to refrain from hiring illegal aliens. My understanding is that the project worked smoothly and successfully. While this cannot be compared to a mandatory, nation-wide program, I believe the experience offers a hopeful auger.

Senator SIMPSON. Mr. Conner, would you just summarize briefly the strengths and weaknesses that you perceive in the administration's approach to this issue, the employer sanctions and identifier system issue?

Mr. CONNER. Well, the strength of the administration's approach is that it would make it illegal to employ illegal immigrants. The weakness of the administration's approach in our view——

Senator SIMPSON. Excuse me for just one moment, I do not like to be distracted like this. Just a moment.

Thank you very much. Please, proceed on that answer.

Mr. CONNER. I think the most serious weaknesse from the standpoint of a potential prosecutor is that there is no way to be sure the employer checked, and that leads ultimately to a contest of two people's testimony in front of a jury as to whether the employer looked at the documents he is supposed to look at under the law. That is a weakness if you look at that class of employers who would try to violate the law.

A second weakness is from the viewpoint of those employers who are going to make a good-faith effort to comply with the law. That class of employers has no real solid evidence that they did look at the documents, so that, in a subsequent prosecution, the investigators and the prosecutor may think that he did not do so. Again, it is a contest of oral testimony.

The administration's approach has the great advantage of making it illegal to hire; but it is going to be more difficult to enforce and more difficult to defend against the kind of criticism you have heard throughout the day than a system that adds the call-in feature.

Senator SIMPSON. Would you concur that the administration's plan in this area with these documents might not allow a great majority of illegal aliens to work by presenting false documents of this kind?

Mr. CONNER. One of the real problems is that, if a person presents false documents to an employer, the employer is not really in the business of examining documents. The employer—by inadvertence, lack of attention, or lack of knowledge—may overlook a fraudulent document. A lot of people are going to get through the system.

A system that has the Government involved either through looking at the documents prior to issuing some sort of a new card or through a call-in feature where a Government agency is doing the checking is far superior.

Senator SIMPSON. Well, I think you might concur that if reform is going to take place it is going to take place only in a manner in which the employer is not burdened. Do you concur with that? Overly burdened?

Mr. CONNER. I think it is very important because the simpler and easier it is for employers to comply, the higher the proportion who will do so voluntarily and without coercion. So it will not only be more easy to get it adopted by Congress, but it will also be more effective in practice if it is relatively simple to comply with.

I also think it will work better from the standpoint of employers if it is phased in. That is to say, there is no reason why one could not start with a simple affirmation system and then step up to the more complex systems in steps, as opposed to waiting until everything is in place before we can have the law become effective that it is illegal to hire.

Senator **Simpson**. Those are some of the things we will be grappling with, but my hunch is—and I think it also jibes with what Mr. Rawitz oberved in his long time in observing this issue on the Hill—that the employers of America galvanize themselves in resisting various issues like this, and immigration reform will be a most difficult proposal, practically, to get passed in Congress.

It is of some satisfaction that I know the employer groups of America are supportive of some type of employment system—watching very closely, of course, to see what it eventually will be in the legislation, but supportive of the concept. That is very helpful. I think you might concur in that.

Mr. **Conner**. I think we find that people involved in business are Americans first and concerned about the interest of America as a whole. The burden that might be imposed on them is important, but it does not come before the interest of the future of our country.

Senator **Simpson**. Certainly, that short-term economic interest is being tested sorely in this situation as we proceed.

Mr. Rawitz, with your long background in the Washington scene, your service on the Judiciary Committee staff in the past, and long association in this area, your proposal, as I understand it, differs from the administration's plan only in not requiring any documents at all for those who claim to be U.S. citizens.

Do you believe that that approach is superior? I know you do, but I have a bit of a problem with that as under your proposal anyone claiming to be a citizen would simply be taken at his word. Why would not then all illegal aliens simply claim to be U.S. citizens?

But more importantly, it seems we are headed toward distinctions there that might well develop into a rather unfortunate situation.

Mr. **Rawitz**. In my experience, which includes 30 years with the Immigration and Naturalization Service, most illegal aliens do not make claims to citizenship. They might make other kinds of claims, but rarely do they claim to be citizens of the United States.

I have no reason to believe false claims to citizenship will increase if there were an employer sanctions law. The offense is punishable, as I mentioned in my testimony, as a felony.

This plan is superior to the administration's in that the great majority of the working force will not be required to present any kind of documentation.

Now, I also differ with the administration in the type of acceptable documentation. The administration has listed four categories of documents. They say that any two of them will be acceptable as proof of eligibility to work.

Well, birth certificates can be obtained by an imposter writing a letter under an assumed name. Very few States require any kind of identification to obtain a driver's license. Present selective service law—this is my understanding—requires illegal aliens to register. So, they can get certificates.

Senator **Simpson**. Yes.

Mr. RAWITZ. I do not think their plan was very well thought out. Social security cards, the fourth category, are easier to counterfeit than almost any other document the U.S. Government puts out.

Senator SIMPSON. Yes. In fact, there is no law against copying them if they do not have the seal. I mean, legally you can copy one just as long as it does not have the seal. That is the legal aspect of it. The illegal aspect is that you can roll them out sealed or unsealed, I suppose, with great impunity.

Let me ask you, illegal aliens are already subject to criminal penalties for their illegal presence in the United States; misdemeanor penalties for the first offense and felony penalties for the subsequent ones. What do they have to fear from these additional penalties, penalties of perjury or misstating their citizenship?

Mr. RAWITZ. Not all illegal aliens are subject to criminal penalty, only those who enter illegally without inspection. Those that come in with proper documentation, such as nonresident cards and overstay; those who come in with nonimmigrant visas and overstay, are not generally subject to any criminal penalty.

Senator SIMPSON. You indicated skepticism that a tamper and counterfeit-resistant card could be developed. Why would that type of card be any more difficult to protect than, say, currency?

Mr. RAWITZ. I do not think it would be any more difficult to protect it than currency. Any card that is developed can be and will be counterfeited. Now, the more difficult it is to counterfeit, the less you will have that kind of practice.

Senator SIMPSON. I am interested in your views. You have actually been on Capitol Hill and observed—and it must be quite a unique experience to see the activity to be generated in this area, it must be kind of a ritual like the swallows in spring for you.

But we are going to get something done. [Laughter.]

Mr. RAWITZ. It is most refreshing, Mr. Chairman, and I wish to add my commendations to those of Secretary Marshal for the great amount of work and interest you have shown in this subject, and the great amount of knowledge you have accumulated in so little time.

Senator SIMPSON. Thank you, sir, I appreciate that.

Thank you both very much, we appreciate your testimony. Nice to see you Mr. Conner.

Mr. CONNER. Thank you very much, Mr. Chairman, for the opportunity.

Senator SIMPSON. We now will have the final panel of today, Prof. Philip Martin of the University of California at Davis, and Mr. David North of the New TransCentury Foundation, a panel of scholars.

If we might proceed, then. Professor Martin, if you will begin.

STATEMENT OF PHILIP MARTIN, ASSOCIATE PROFESSOR, UNIVERSITY OF CALIFORNIA AT DAVIS

Mr. MARTIN. Thank you. I am Philip Martin, associate professor of agrigultural economics at the University of California at Davis.

I have been asked to describe the immigration control systems used in Europe. Before describing those control systems, I will summarize recent European immigration policies for about 1 minute.

As you know, Northern European nations began recruiting foreign labor in the 1950's. In the 1960's, the foreign work force was doubling every 2 or 3 years. In 1973, about 7 million migrants were at work across Europe; they comprised about 10 percent of the recruiting-country work forces. The labor recruitment stopped in 1973–74.

Since 1973, over 2 million of the migrants have returned to their home countries, but the remaining 5 million have been joined by 9 million dependents, bringing the total foreign population to about 14 million. Even though foreign worker recruitment was stopped 8 years ago, this foreign population will continue increasing by about 300,000 to 500,000 annually until family unification is completed.

Much of my written testimony refers to the German system. Germany is Europe's most populous nation—it has 61 million people—and has the most foreign residents—about 4.6 million.

In addition, Chancellor Helmut Schmidt made the integration of foreigners his government's top domestic priority after his reelection last October.

My written testimony also covers the other major labor importer in Europe, France, which has about 4.2 million foreigners. Both the French and German immigration control systems are outlined in more detail in a book called, "Administering Temporary Worker Programs: Lessons from Europe"—Lexington Books, 1982—which is written with Prof. Mark Miller of the University of Delaware.

The main points of the testimony are these: Most Europeans have the right to live and work in any other European country because the 10-nation European Economic Community and the 4-nation Scandinavian Common Market guarantee free labor mobility between member nations.

The interesting point is how few people take advantage of that right to migrate, as opposed to how many. About 900,000 Italians are outside of Italy and about 100,000 Finns are outside of Finland. Migrants move from poor to richer nations.

The migrants without mobility guarantees—about 70 percent of all the foreign workers now in Europe—are admitted after an employer is able to convince a local labor office that native workers cannot be found to fill vacant jobs. Since 1973–74 most nations have stopped labor recruitment from non-EEC countries.

Before the recruitment stop in 1973, a German employer would request 500 Turks. The request was sent on to a bilateral recruitment mission in Istanbul. The employer's request was filled from a waiting list—at one time it reached 1 million Turks—who had already been screened for health and work skills. Each migrant got a translated employment contract that tied him to a particular employer, and also received an entry card, in order to enter Germany.

Germany and most other European countries have separate work and residence permit systems. A work permit must be shown to all potential employers and its number must be recorded.

Work permits are of two kinds: A general work permit is issued for 1 or 2 years and may be renewed at the discretion of the local labor office; a special work permit entitles the bearer to seek work regardless of labor market conditions. General work permits are often not renewed if unemployment is high. A foreigner may obtain a special work permit after 5 years of continuous employment or after marrying a German citizen who is living in Germany.

A separate residence permit is required to live in Germany for more than 3 months. Before 1973, a general work permit and a limited residence permit valid for 1 year were issued simultaneously.

Since the 1973 recruitment stop, residence permits are not issued unless an applicant already has a work permit. Since no new work permits are being issued, there are no residence permits available to independent, non-EEC residents who want to work.

After 5 years continuous residence and the receipt of a special work permit, any non-EEC migrant may obtain an unlimited residence permit if the applicant can speak and understand German, has suitable housing, and sends his school-age children to school.

The residence permit can be revoked for commiting, for example, a misdemeanor. A residence title—after 8 years—essentially confers permanent resident alien status.

Two quick notes about illegal aliens and refugees: Both are smaller problems in Germany than in the United States. Germany has about 2 million legal migrant workers at this time, and about 200,000 to 300,000 illegal aliens, most in hotels and restaurants, agriculture, and construction. Sanctions are stiff. Employer sanctions include jail terms and fines of about $15,000. Unions and employers are demanding stepped-up enforcement.

I will make one more note about the current problem. A very special problem is labor contracting in construction, where about half the illegals are assumed to be.

There are labor contractors to act as subcontractors, supplying unskilled labor. What they basically do is pay normal wages but do not pay mandatory fringe benefits which can add up to 70 percent of wage costs.

The Government has proposed a ban on all labor contractors in construction; a fine of $25,000 that would be collected both from the employer and the worker. At the same time, the Government is now using undercover agents to apply as workers on jobsites in order to identify violators in construction.

I will stop there, and we can talk about some of the other things later.

Senator Simpson. Fine.

[The prepared statement of Philip Martin follows:]

PREPARED STATEMENT OF PHILIP MARTIN

I am Philip Martin, Associate Professor of Agricultural Economics at the University of California - Davis. I have been asked to outline the immigration control systems used in Europe. Before describing these control systems, I will summarize recent European immigration policies.

Northern European nations began recruiting foreign labor in 1950's. In the 1960's, the foreign workforce was doubling every 2 or 3 years. In 1973, about 7 million migrants were at work, comprising almost 10 percent of recruiting-country workforces. The major labor recruitors stopped immigration in 1973-74 (Table 1).

Since 1973, over 2 million migrants returned to their home countries. But the remaining 5 million have been joined by 9 million dependents, bringing the total foreign population to 14 million. Even though worker recruitment is stopped, this foreign population will continue increasing by 300,000 to 500,000 annually until family unification is completed.

Much of my written testimony refers to the German system. Germany is Europe's most populous nation (61 million) and has the most foreign residents (4.6 million). Chancellor Helmut Schmidt has made the integration of foreigners his government's top domestic priority. My written testimony also covers the other major labor importer, France, with about 4.2 million foreigners. Both the French and German immigration systems

Table 1. Guestworkers in Europe: 1973.

Country	Civilian Labor Force	Foreign Workers	Percent	Control Measures
Austria	2,950,000	236,000	7.9	March 1975-new controls
Belgium	3,914,000	265,000	6.8	August 1974-recruitment stop*
Denmark	2,406,000	49,000	2.0	November 1973-recruitment stop*
France	21,403,000	1,930,000	9.0	July 1974-recruitment stop*
Germany	26,475,000	2,500,000	9.4	November 1973-recruitment stop*
Great Britain	25,129,000	1,835,000	7.3	January 1973-new controls
Luxemburg	154,000	43,000	27.9	No change
Netherlands	4,681,000	160,000	3.4	December 1974-new controls*
Norway	1,680,000	21,000	1.3	February 1975-recruitment stop
Sweden	3,904,000	222,000	5.7	January 1967-new controls
Switzerland	3,050,000	861,000	28.2	January 1975-new controls
Europe	95,786,000	8,122,000	8.5	

*applies to migrants from non-EEC countries

Source: National statistics yearbooks; "Anstieg der Auslanderbeschaefrigung gestoppt" (Munich: Ifo, April 21, 1975) are outlined in more detail in a forthcoming book, Administering Temporary Worker Programs: Lessons from Europe (Lexington Books, 1981), written with Professor Mark Miller of the University of Delaware.

Summary

1. Most Europeans are free to live and work in any European country because the 10-nation EEC and the 4 Scandanavian countries guarantee free mobility between member-nations. About 900,000 Italians and 100,000 Finns take advantage of these mobility guarantees to earn higher wages.

2. Migrants without mobility guarantees -- about 70 percent of the resident foreign workers -- are admitted after an employer convinces the local labor office that native workers cannot be found to fill a vacant job. Since 1973, most nations have stopped recruitment from non-EEC countries.

3. Before the recruitment stop in 1973, a German employer's request e.g. for 500 Turks, was sent to a bilateral recruitment mission in Istanbul. The employer's request was filled from the waiting list of almost one million Turks screened for health and work skills. Each migrant signed a (translated) employment contract that tied him to a particular employer. The migrant received an entry card (Legitimationskarte) to enter Germany.

4. Germany and most other European countries have separate work and residence permit systems. A work permit (Arbeitserlaubnis) must be shown to potential employers and its number recorded. Work permits are of two kinds:

   -- *General* work permits are issued for one or two years and may be renewed at the discretion of the local labor office;

   -- *Special* work permits entitle the bearer to seek work regardless of labor market conditions for five years. A foreigner may obtain a special work permit after 5 years continuous employment or after marrying a German citizen living in FRG.

A separate residence permit (Aufenhalterlaubnis) is required to live in Germany for more than 3 months. Before 1973, a general work permit and a limited residence permit valid for one year were issued simultaneously. Since the 1973 recruitment stop, residence permits are not issued unless an applicant already has a work permit. Since no work permits are being issued, residence permits are not available to independent, non-EEC residents who want to work in Germany.

-- After 5 years continuous residence and the receipt of a special work permit, a non-EEC migrant may obtain an unlimited residence permit if the applicant can speak and understand elementary German, has suitable housing, and sends his school-aged children to school.

-- A residence permit can be revoked e.g. for committing a misdemeanor. A residence title -- available after 8 years of continuous residence, a written and oral German test, and proof that the applicant has "adapted himself to the economic and social structure of the FRG", -- essentially confers permanent resident alien status on the migrant.

5. None of the upgraded permits is issued automatically. The burden-of-proof rests on the foreigner.

6. All Germans must carry national identity cards. Foreigners must have 3 separate pieces of identification: a passport, a residence permit, and a work permit. All persons living in Germany must register themselves, their children, and long-term visitors at the local police department (Anmeldung).

7. Illegal aliens and "economic refugees" are problems. Germany's legal migrant workforce of 2 million is supplemented by an estimated 200,000 to 300,000 illegal aliens in hotels and restaurants, agriculture, and construction. Despite employer sanctions that include jail terms and fines of up to 30,000 DM, both unions and some employers are demanding stepped-up enforcement.

   A special problem is labor contracting (Leiharbeit) in construction. These contractors advertise their willingness to supply crews of construction workers at subnormal wages and save employers the cost of mandatory fringe benefits that can add 70 percent to wage costs. The government has proposed a ban on labor contractors in construction and a 50,000 DM fine applied to both contractor and worker.

8. Germany has a very liberal refugee law. In 1979, Turkish newspapers reproduced German asylum forms and explained how questions should be answered. Turks flew to East Berlin and walked into West Berlin to request asylum. Until 1980, persons requesting asylum were given a one-year work permit and a monthly allowance of 306 DM for expenses and up to 1000 DM for housing. With appeal rights, an applicant whose claim was eventually denied could still work in Germany six or seven years. In 1980, 108,000 persons sought asylum in Germany.

Since November 1980, Turks and nationals from the Indian sub-continent must have visas to enter Germany. Work permits are no longer issued and most applicants for asylum are now sent to semi-isolated refugee camps, where they receive assistance in-kind. In the first half of 1981, the number of asylum applications declined to 23,000.

9. *Assessment* -- Germany has one of the most extensive immigration control systems in Europe. Despite these controls, Germany has illegal immigration and economic refugees. The German experience shows that the migrant labor tap is far easier to open than to close.

Europe

The free movement guarantees of the ten-nation European Economic Community (EEC) and the four-nation Common Nordic Labor Market give most Europeans the right to live and work in another country on an equal footing with natives.[1] Relatively few eligible persons take advantage of these mobility guarantees. Those who do move generally do so to take a position with an international organization or a multinational firm or move from low to higher income countries. Thousands of "EEC guestworkers" are border crossers, living in one country and commuting daily to a job in another.

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[1] Greece became the tenth EEC member on January 1, 1981. However, Greek workers are *not* permitted free mobility to seek jobs in other EEC nations until 1987.

EEC nationals find jobs in another EEC state through friends, relatives, or public labor offices. EEC nationals may move first and then seek a job, sometimes collecting unemployment insurance (UI) while looking. EEC nationals normally bid for job vacancies just like natives.

In 1978, almost 5 million foreign workers were employed in the major recruiting countries (Table 2). Most of Europe's migrant workers (guestworkers) are from the non-EEC "recruitment lands" of Southeastern Europe, Iberia, and North Africa. This report describes the procedures for admitting such workers to Germany and France. The admissions tests described apply to "commerical labor transfers," that is, labor agreements motivated by economic considerations.

Table 2. Foreign workers - 1978.

		[In thousands]								
		Country of employment								
Country of origin		Austria	Belgium	France	Germany	Luxembourg	Netherlands	Sweden	Switzerland	Total
Algeria		—	2.4	561.0	—	—	—	0.3	—	563.7
Austria		—	3.7	—	76.0	—	—	2.0	19.5	101.2
Finland		—	—	—	2.9	—	—	104.5	—	107.4
Greece		—	9.6	—	153.3	—	2.0	8.1	4.8	177.8
Italy		2.0	106.4	175.8	305.1	10.8	10.4	2.7	240.1	853.3
Morocco		—	22.2	181.4	—	—	31.0	0.6	—	235.2
Portugal		—	3.9	385.0	59.9	12.5	5.4	0.9	4.9	472.9
Spain		0.2	27.3	184.5	95.8	2.2	17.6	1.7	61.6	390.9
Tunisia		—	1.9	73.7	—	—	1.2	0.4	—	77.2
Turkey		26.2	17.0	56.3	540.5	—	45.1	4.5	16.7	686.3
Yugoslavia		121.1	3.0	43.1	380.2	0.6	8.1	24.6	26.2	606.9
Other countries-	EEC	12.7	87.7	66.2	131.6	20.7	52.6	32.0	83.7	487.2
	Non-EEC	14.5	18.2	155.8	216.6	1.9	23.0	42.2	31.9	504.1
Total		176.7	303.3	1,642.8	1,961.9	49.1	196.4	224.5	489.4	5,044.1

Source: SOPEMI (1979)

Germany

As a "nonimmigration land," German guestworker policies were motivated by the desire for *temporary* migrants to avoid growth-stifling labor bottlenecks. Since the need for alien labor was assumed to be only short-term, German policies represent a series of *ad hoc* responses to the unexpected presence of so many migrants for such a long time. No predetermined ceiling was ever set on the total number of migrants or the number any individual firm or industry could hire. The clearest policy demarcation is the November 1973 recruitment stop--when Germany stopped the entry of non-EEC workers.

German labor market tests were influenced by widely perceived "unique" economic circumstances. The 1960s view was that the German economy offered enormous profit opportunities. Capital to build factories and markets to sell products were readily available. The only thing standing in the way of profit for employers and upward mobility for native workers was insufficient labor. If a little foreign labor were available for the few years this extraordinary economic situation was expected to last, a series of blessings would follow--private profits, upward mobility for natives, extra tax monies and reduced inflationary pressures.

Most Germans were opposed to *fremd* (strange) immigrants. The German employers' political success was to convince the German people that alien workers would remain guests. Hence, Germany could admit 500,000 alien workers annually and still proclaim that it was *not* an immigration land.

Recruitment

German *employers* set the migration process in motion by reporting vacancies they could not fill to local labor offices. Germany has no minimum wage standards, so German employers were required to offer "prevailing wages" when recruiting natives. These prevailing wages were averages determined by Labor Ministry records or represented the "prevailing wages" negotiated in national or regional union agreements. Employer requests for alien workers were accompanied by the opinion of the union (if available) *and* the works' council (required at all worksites with 5 or more employees). A German employer's request specified the number, qualifications, and nationality of the aliens desired. The employer could request specific migrants by name, e.g., the relatives or friends of migrants already worker.

The works' council was the key plant-level organization to check employer appetites for migrant workers. Every establishment with five or more workers must form a works council that discusses working conditions with the employer. These legally-mandated works councils are independent of any union, although union members are elected frequently.* If an employer could not secure the blessing of his works' council when requesting migrants, local ES offices were likely to reject his application. Thus, *local works councils act as the local labor market testing mechanism in Germany.*

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*Since 1971, foreign workers can vote and run for office in works council elections.

German employers paid a recruitment fee for each alien requested (the fee was refunded if no alien was delivered). The fees paid bore little relation to actual recruitment and transportation costs. The German-Italian agreement of December 20, 1955 required a 50 DM (now $25) fee per worker. The labor agreements with Spain, Greece, Yugoslavia, and Turkey required that employers pay the German labor office 165 DM for each migrant recruited through the joint recruiting commissions. Some companies (e.g., Ford) had their own recruiting agents (in Turkey) and paid lower recruitment fees.

On May 1, 1972, the recruitment fee was raised to 300 DM (60 DM for Italians). There was still no explicit link between actual recruitment and transportation costs and the recruitment fee. However, a June 6, 1973 government position paper urged that the recruitment fee be increased to accumulate monies for an integration fund. This policy was adopted and a 1000 DM fee imposed for each migrant recruited after September 1, 1973. Very little money was accumulated because of the November 1973 recruitment stop.

Not all the migrants recruited for jobs in Germany wanted to stay. About five percent of all contracts (up to 25,000 workers in peak years) were broken by the migrants after arrival in Germany. The migrant was required to pay his own transportation expenses home or faced deportation. German employers' recruitment fees were refunded or the migrant was replaced at no additional cost.

The *local labor office* is the key administrative unit. It decided (1) if resident workers were available and (2) whether the employer made reasonable adjustments to hire resident workers or to utilize handicapped, aged, and part-time workers before requesting aliens. Although each employer request was handled separately, the system permitted *de facto* blanket certification since many local labor offices "knew" no Germans were available for construction, restaurant, and assembly-line jobs. After the local labor office agreed with an employer that resident workers were not available and local authorities approved the housing the migrants would occupy, the employer's request was forwarded to the federal labor office (BFA) in Nuremberg.

BFA transmitted the employers' request to a joint German-native commission of the appropriate recruitment country. Unless a specific worker was named (one-third of the Turks were requested by name between 1965 and 1975) local authorities had exclusive authority to recruit migrants with the specified qualifications whenever and however they chose. German officials stationed abroad screened migrant recruits for health and skills and arranged for an entry card (Legitimationskarte). Each guestworker signed a (translated) employment contract tying him to a single employer. The German labor office arranged and paid for transportation (train or charter plane) to Germany. Upon arrival, the entry card was converted into separate one-year residence and work permits.

Most employers could expect unskilled migrants within three or four weeks. Skilled requests took longer to fill, sometimes two months. When migration peaked in the early 1970's some 600 to 1,000 migrants would arrive daily in Germany. Most came by train, but charter plane transportation was used to bring one-third of the Turks.

Work Permits

German work permits are of two kinds. Most migrants originally went to Germany with one or two-year *general* work permits renewable for two years at the discretion of the local labor office. Since November 1974, local labor offices have far less discretion to renew general work permits. Renewal applications are examined on a case-by-case basis, with employers under an obligation to make "reasonable efforts" to find native workers. Local ES offices are to minimize unemployment and prevent substandard working conditions when considering renewal requests. The predictable result is local discretion and standards that vary from one city to another.

With two exceptions, the 1974 regulations still leave local labor offices some discretion. No work permits are available to "independent" aliens from outside the EEC hoping to take up work (e.g., if they entered Germany on a tourist visa). Since migrant families continued to unite in Germany after the 1974 recruitment ban, transition rules governed the eligibility of spouses and children for work permits. After (widely criticized) attempts to establish "key dates" before and after which entry entitled one to a work permit, a simpler waiting period rule was adopted on March 21, 1979. Spouses and children of a migrant already in Germany are eligible for the restrictive general work permits (1) four years after entry for spouses (three years if the spouse wants to work in a "labor short" industry, e.g., hotels and restaurants) and (2) two years for teenagers reaching 16 (these two-years can be waived if the alien teenager finishes vocational training courses). It should be noted that a general work permit is required to participate in a vocational training program.

Unlike general permits, *special* work permits are issued regardless of labor market conditions. Special work permits, valid for five years, do not tie the migrant to an employer or occupation but may limit him to work in a specific region. Migrants are eligible for unrestrictive special work permits after five years continuous employment in FRG or if they marry a German living in FRG.

Work permits remain valid for stipulated periods so long as the migrant remains in Germany. Work permits become invalid if a migrant leaves Germany and stays away more than three months. The only exceptions to this three month rule are absences caused by pregnancy, an apprenticeship at home, or military service. In the case of military service, most foreign youth in Germany must serve in their home country's armed forces or risk loss of citizenship.

Sometimes the employers who signed contracts with migrants laid them off or went out of business. Mergers or plant shutdowns put local labor offices under an "obligation" to find another job for the migrant so long as his work permit remained valid. A 1972 court ruling held that the breaking of a work contract by either worker or employer was not sufficient reason to send a migrant home, but the ruling did not spell out the obligations of the labor office to find another job for the migrant. In practice, the treatment in these "special cases" depended on local administrators.

Unemployed migrants are eligible for UI just like Germans so long as their work permits remain valid. All unemployed persons registered with the labor office are eligble for normal UI (Arbeitslosengeld) equal to 68 percent of one's previous earnings for up to one year (one-half the time actually worked for persons with less than one year's work experience). Long-term unemployed persons are eligible for indefinite extended benefits (Arbeitslosenhilfe) equal to 58 percent of previous earnings. New labor force entrants and refugees seeking asylum also get a 58 percent UI benefit based on prevailing wages in their occupation.

A migrant's one or two year work permit expired if the migrant was jobless more than one year (his separate *residence* permit may allow him to stay in Germany). The German Labor Ministry (BFA) took the position that long-term jobless migrants were not eligible for the extended 58 percent UI benefit because their lack of a valid work permit meant they were not available for work. German courts overruled the BFA, finding that BFA must show that no jobs existed for which the migrant could be granted a work permit before BFA could deny extended UI.

In sum, a German work permit is a guarantee of earnings or UI for as long as the work permit is valid. The burden-of-proof falls on BFA to show that a UI applicant is *not* entitled to benefits.

Residence Permits

A work permit entitles one to work in Germany. However, a separate *residence permit* is required to live in Germany. For non-EEC migrants, a residence permit (needed for stays longer than three months) requires the applicant to already have a work permit, allowing Catch-22 situations to arise, as when an applicant will not be hired until a work permit is in hand and the work permit will not be issued until an employment contract is signed.

Once a work permit is obtained, a one-year *limited residence permit* renewable for two years is granted (pre-1973 recruitment procedures allowed the general work permit and limited residence permit to be issued simultaneously). After five years continuous residence *and* issuance of a special work permit, a non-EEC migrant may obtain an *unlimited residence permit* if he can speak and understand rudimentary Germany, has suitable housing, and his school-aged children are in school. These last three qualifications for an unlimited residence permit are somewhat vague, allowing some local discretion. Migrant spouses must meet the length of stay and other qualifications but do not need a special work permit to obtain an unlimited residence permit. Children must obtain residence permits at age 16.

Residence permits could be revoked (but rarely were) if a migrant later violated residence permit conditions by, e.g., moving into unsuitable housing or keeping his school-aged children out of school. All residence changes are to be registered with the police within two weeks. However, migrants living "illegally" were rarely caught unless they suffered an accident or committed a crime. Similarly, a failure to send children to school was rarely discovered; the primary incentives for school attendence were to educate children and to get the children's allowances paid to parents whose school-aged children attend school.

A *residence title* confers permanent resident alien status on a migrant in Germany. Residence titles are available after eight years continuous residence, a German test with both oral and written components, and proof that the migrant has "adapted himself to the economic and social structure of the FRG." No permits are granted automatically to migrants. Migrants must apply and prove to district authorities that they have satisfied all the relevant stipulations. A residence title gives the migrant virtually all the *economic* rights of a native *within* Germany (Germans also have political rights and economic rights in other EEC nations).

Regional Limits

In April 1975, Germany launched a one-year experiment with regional limits on the alien share of an areas's *population* (not employment). A region could be declared off-limits to new aliens by local authorities if the proportion of aliens in the area's population exceeded 12 percent. Even if aliens were less than 12 percent of the population, provincial (*Land*) authorities could find that more aliens would place "undue burdens" on the social infrastructure and prohibit the granting of work and residence permits to aliens wanting to move to the area. After a one-year renewal, regional limits were abandoned in April 1977.

Assessment

Local labor market tests played a minor role in determining the number and distribution of German guestworkers. The (implicit) agreement reached in 1960 permitted private negotiations between employers and unions/works councils to determine the number and distribution of migrants. The labor office merely ratified recruitment decisions reached privately.

The German labor ministry played such a small role in guestworker decisions because:

1. The prevailing wages paid to *all* workers were privately negotiated and infractions were reported by both unions *and* employers.

   Germany has no offical minimum wage, hence there was no need to adjust it for wage depression caused by migrant workers.
2. The recruitment fees levied were not meant to influence migrant hiring decisions until 1973. No attempt was made to find a fee that led to "optimal" native-migrant trade-offs.

The private agreement-labor office ratification system worked remarkably well until 1973. In the 1960's, changes in the number of guestworkers admitted annually correlated almost perfectly with German unemployment rates. The 1966-67 recession saw an immediate recruitment halt and the return of 500,000 migrants, lowering German unemployment.

The system that worked so well in the 1960's lost its flexibility when socio-political pressures prompted the recruitment halt. The entry limits imposed in 1973 also encouraged longer-term stays. The German system could halt new entries, but only by loosening the reins controlling migrants already in Germany.

Except for dependents, migrants have not been admitted since 1973. Entry pressures are reflected in illegal aliens and a surge in "economic refugees." Most estimates place the number of illegal aliens at 200,000 to 300,000, 10 to 15 percent of the legal alien workforce. Despite identification and permit systems as well as employer sanctions of up to four year prison-terms and 30,000 DM fines, illegal aliens are "common" in hotels and restaurants and construction. The German unions (and employers) calling attention to illegal aliens stress that better enforcement is needed, not more laws.

The illegal aliens employed in hotels and resturants and at some construction sites are familiar to Americans. But European construction also contains a unique feature. Some German construction is done by foreign firms with foreign workforces (e.g., Yugoslav workers). German unions and employers complain that these foreign firms do not pay prevailing wages and use more foreigners (and fewer natives) than promised in contract bids.

The second entry pressure comes from "economic refugees." The difficulties experienced by Germans fleeting Hitler prompted a very liberal refugee provision in Germany's 1949 Basic Law. Until 1980, persons requesting asylum were given a work permit and a monthly allowance of 306 DM for expenses and up to 1000 DM for housing. Under most circumstances, an applicant for asylum can work or receive welfare benefits six/or seven years while appealing adverse rulings to stay in Germany. In 1980, there was a "flood" of 108,000 refugees to Germany.. Many were Turks who flew to East Berlin and then crossed into West Berlin (one of the few points in the world where there are no border checks on incoming persons).

Since November 1980, Turks and citizens of other "refugee" countries must obtain visas to enter Germany. Applicants for asylum are no longer eligible for a work permit during their first year in Germany and most are now sent to semi-isolated refugee camps. Assistance is given in-kind instead of in-cash. Authorities have speeded-up the hearing and appeal procedure by having a single hearing officer (instead of a panel) make an initial determination of refugee status and then restricting most applicants to one appeal before a single judge. These new regulations seem to have had an effect, since the number of applicants for asylum has declined in 1981.

Germany's migrant recruitment and control system is one of the most comprehensive anywhere. It represents a series of *ad hoc* responses to real problems, not a system that anticipated problems and had regulations already in place. Despite the seemingly comprehensive system, German authorites found themselves losing control over their migrant workers as employers demanded more migrants for longer periods and after interest groups sprang up to lobby on their behalf. The Germans discovered that the migrant tap could not easily be closed. When the migrant workforce was increasing, entry levels were precisely regulated. But closing the tap was more like pushing into a ballon—the recruitment stop was negated by family unification, illegal aliens, and economic refugees.

France

The French migrant labor system differs from the German system in several important respects. First, France has a "planned" economy. Its five year "indicative plans" show government priorities and are meant to guide private decisions. Second, France is the only major labor importer that is also a traditional magnet for immigration. Migrant workers were an addition to a steady stream of "non-French" immigrants and refugees. French tolerance for illegal entry and its willingness to grant amnesty periodically paints a picture of a much looser French migrant control policy.

If France was relaxed about the immigration of foreign workers in the 1960's, the 1970's proved that France could adopt extreme measures to encourage migrant departure and return Frenchmen to migrants' jobs. Since 1977 France offers cash departure bonuses and one-way airfare to migrants who surrender their work permits and all rights to French social welfare benefits. The go-home bonus scheme was followed by a plan to encourage Frenchmen to take the jobs vacated by departing migrants. In contrast to German policy, the French appear more extreme, shifting from an easy tolerance of private migrant activities to intervention and strict public controls.

Recruitment

As in Germany, French employers nominally set the recruitment process in motion by applying for migrants at the local ES office. Since all workers in France are protected by minimum wage laws that establish monthly wage floors for each industry (most blue-collar workers are "salaried"), the employer must promise to pay migrants at least the germane minimum wage. As in Germany, the employer's application for migrants had to include the opinion of the relevant union and/or works council. The local ES office certified the unavailability of native workers and forwarded the employer's request to bilateral recruitment missions in Italy, Algeria, Spain or Portugal.

The French recruitment system was both more and less organized than the German system. The French national economic plans projected industry and area labor supplies and demands. Through-out the 1960's, these plans consistently projected labor shortages in unskilled construction, manufacturing, and service jobs in the major cities.

National plan projections permitted France to negotiate yearly quotas with some of the labor exporters. From 1964 through 1967, Algeria had a quota of 12,000 migrants annually (a figure based in part on Algeria's "need" to export labor). The Algerian quota was raised to a more flexible range--25,000 to 35,000 yearly--after 1968. In 1973, recruitment was stopped. Similarly, a 1971 agreement gave Portugal a 65,000 annual migrant quota.

The precision implicit in the national projections and annual quota was undercut by widespread illegal immigration and periodic amnesty. The exact numbers are hard to pinpoint but it appears that up to half the French migrants in some years came "irregularly." Many employers and migrants were frustrated by an apparently inefficient certification and recruitment bureaucracy. The manpower projections rationalized France's open door for migrants. Acknowledged deficiencies in official migrant channels permitted widespread tolerance for illegal entry. However, only with the general recruitment stop in 1973 did the French government really start to gain control of migrant admissions.

Work Permits

The pre-1975 French work permit system parallels its general attitude toward migrant workers--a relaxed tolerance in the midst of general confusion. Before 1975, work permits were not synchronized with residence permits. Some migrants (e.g., Algerians) had special work permits and others (e.g., seasonals in agriculture and hotels and restaurants) got very restricted permits. The 1975 work permit reforms coordinated work permits and residence permits and put all non-EEC, nonseasonal workers on an equal footing.

Migrants recruited through official French channels got one-year contracts with a specific employer. After arrival the migrant showed his work contract to obtain a one-year "A" work permit and a separate residence permit. Continued (legal) residence was contingent on the migrant's fulfillment of his work contract. After one year, the migrant could switch employers or renew his work and residence permits with the same employer.

Most migrants successfully completing a one-year labor contract were eligible for three-year "B" work permits. Although these three-year permits did not restrict the migrant to one employer, they often named the industry and area in which the migrant could work. After 1975, these industry and area restrictions were eased.

After four years continuous work and residence in France a migrant is eligible for a 10 year, renewable "C" work permit. These 10 year work permits carry no employment restrictions.

Residence Permits

A migrant living in France was required to have both work and residence permits. The three-tiered residence permit system paralleled (but was not always coordinated with) the work permit system:

1. Temporary resident cards were one year permits available to A work permit holders.
2. Ordinary resident cards gave B permit holders the right to live in France three years.
3. Privileged resident cards, granted after ten years continuous living in France, normally permit permanent residence.

German residence permits are prized because they expedite family unification in Germany. The French system is more ambiguous. France had a relatively liberal family unification system before the 1973 recruitment stop. The children of a migrant living legally in France for four years and attending French schools automatically qualify for the 10-year C work permits. Other dependents must apply for French work permits.

Migrants are usually concentrated in the largest industrial cities. For example, one-third of France's migrants live in the Paris region. The availability of migrants slowed the decentralization of industry encouraged by the French government, but France adopted no regional limits policy like Germany.

Return and Revalorization

France imposed a recruitment stop in 1973. The migrant workforce stabilized at about 1.8 million but the resident foreign population swelled by dependents to 4.2 million by 1977. In 1977, France adopted a cash departure bonus scheme that pays 10,000 frans ($2000) and one-way airfare to any migrant resident in France at least 5 years who surrendered his work and residence permits and all future claims to French social security. After three years only 87,500 of France's migrants had taken advantage of the departure bonuses. Most of the first leavers were older Portuguese workers intending to return anyway--the bonus simply influenced the timing of their return. The Algerians at whom the program was aimed shunned the bonuses, in part because $2,000 is less than the severance pay and unemployment insurance most migrants would receive if they lost their jobs. In addition, the fact that the bonus was paid in local currency *after* the migrant returned home allowed labor-sending countries to tax the migrant windfalls.

Industry bonuses supplement the national departure scheme. The French steel industry, for example, paid $12,500 to migrants (and natives) who quit in 1979-80 (the migrants "were encouraged" to leave France with their bonuses). These industry bonuses have become more common in recent years in both France and Germany.

The French believed that the presence of so many migrants for so long had "downgraded" blue-collar work in the eyes of many Frenchmen. A special "revalorization" program was begun to attract Frenchmen back into vacated migrant jobs. Initial results seem to obey the law of thirds: one-third of the vacated jobs were taken by Frenchmen, one-third were filled by previously unemployed migrants, and one-third of the vacated jobs disappeared. The revalorization campaign continues despite vociferous union opposition.

Senator SIMPSON. Mr. North, please.

STATEMENT OF DAVID NORTH, DIRECTOR, CENTER FOR LABOR AND MIGRATION STUDIES, NEW TRANSCENTURY FOUNDATION

Mr. NORTH. Mr. Chairman, I would like to talk about an identification system to be used to support an employer sanctions program should such a program be enacted.

Before I get into that, I would like to make a very mild diversion and talk about a bill that may be coming before this committee, which is H.R. 2043, the INS efficiency package. Many provisions of the bill are important, many are not controversial. One I would like to call negatively to your attention is the suggestion—largely for budgetary reasons—that the annual filing of alien address forms be eliminated.

There are about 4 million such forms filed annually, and they are a magnificent source of data. In some years, such as 1970—and the Census Bureau will not tell you this—this data gave us a much more complete count of the alien population than the 1970 census did. They counted, for instance, three-quarters of a million Mexican nationals in this country as aliens, whereas the census counted about half a million.

Further, this is the only source of information that is readily available on the secondary migration of refugees. As you may know from conversations with your colleagues in California, that is a particularly important source of data to them and to the Nation as a whole.

I would urge that that valuable data system not be scrapped because its value is not fully recognized by the Immigration Service.

Returning to the subject at hand, I would like to suggest that the critics of employer sanctions are correct, that employers should not be given the task of determining who is a legal worker and who is not. They are correct for two reasons. One is that it is an unreasonable burden in terms of time on the employers; and second, it is too likely to facilitate discrimination against foreign-looking workers.

For these reasons, if we do implement an employer sanctions program, there will be a need in the long run for a secure system—either a card or a call-in system of some kind.

Either of these systems would eliminate the element of employer discretion, which is something to be concerned about. Meanwhile, however, setting in motion either one of those systems would take a considerable length of time. If one wants to move ahead in the next 2 or 3 years with an employer sanctions program, one needs an interim proposal. I would like to suggest one, and I have in this written testimony.

I would like to add that this step-by-step approach resembles—if it does not exactly mirror—the approach of Senator Huddleston in his legislation.

The proposal that we bring to your attention, and this takes into account one of the questions that you asked of Mr. Rawitz a few minutes ago, takes into account the experience in a somewhat similar field. That is the work done by the State of California to prevent illegal aliens from drawing welfare benefits.

That program revolves around the requirement that would-be alien beneficiaries complete a form about their alien status which, they are told, will be sent to the Immigraton Service for verification. That is a very important part of the process.

The county of Los Angeles alone—that one county—saves more than $50 million a year in welfare benefits when about a fifth of the alien applicants identify themselves as illegal immigrants by refusing to complete the form.

I am suggesting an employee affidavit system in which the employee will be asked to complete a form which he will be told may be sent or will be sent to the Immigration Service.

I think that is a more effective deterrent than we realize, and certainly the experience in Los Angeles County suggests it would be.

What I have in mind is a new-hire reporting system which is described in my testimony, and which includes a form to be completed on each new worker. Workers would be asked to fill in part of the form indicating just their name, address, and their employer; employers would be asked to fill in the balance, indicating their employer number, and whether or not they helped the worker fill in the form. That is an important part.

One of the things one would want to avoid is collusion on the part of a small minority of employers and their workers where the employer helps the illegal immigrant fill in a form that he could not fill in otherwise. It would be fairly easy to detect in a conversation an instance of collusion if that were in fact the case. If the employee indicated that he had certain documents on the form, but in conversation he could not tell you about that, that would suggest that there had been some collusion.

That program, were it credible, would tend to discourage illegal alien employment. We visualize the following scenarios:

Most employers, including some who had hired illegal aliens in the past, would take the program seriously and would ask new workers to fill in the forms. Many illegal aliens, we also assume—given the Los Angeles experience—would not risk completing the form and would look for an employer who would not ask them to do that.

Illegal aliens bearing counterfeit green cards—which is a problem—would agree to complete the form and would hope that their numbers would not be checked. Hopefully, in some sampling system, those numbers in fact would be checked.

Some employers—and I am sure this would be a minority—would in fact collude with their illegal alien employees and tell them how to lie to the Government. The form is complete enough so that the illegal is forced to lie about himself—his place of birth, for example—as well as to lie about his legal status in the United States to complete the form.

We think that kind of arrangement would be helpful in discouraging—not eliminating—illegal alien employment in the country, and we think that the system is designed in such a way that it would not lead to discrimination against foreign-looking workers, which is a very real concern.

Thank you, Mr. Chairman. I gather you have a plane to catch.

Senator SIMPSON. Not quite yet, but that is coming. I am to be in Laramie, Wyo., tonight.

[The prepared statement of David North follows:]

PREPARED STATEMENT OF DAVID NORTH

Mr. Chairman, today's hearing is about identification systems which can be used to support an employer sanctions program, assuming that such a program is enacted, but before I describe an approach to the enforcement of employer sanctions let me make a brief, some-what related point.

H.R. 2043, the INS Efficiency Package, may come before this committee. Many provisions of that bill are extremely important, and most are non-controversial. One provision, however, would (largely for budgetary reasons) eliminate the annual filing of alien address forms. About 4,000,000 forms are filed annually, and they are a magnificent source of data -- in some years, such as 1970, this data system gave us a much more complete count of the alien population than the Census did. Further, it is the only reliable source of information on the secondary migration of refugees -- a subject of tremendous importance to your colleagues in California. Please do not let this valuable data system be scraped because its value is not fully recognized by INS.

Returning to the subject at hand, I would like to suggest that the critics of employer sanctions are correct -- that employers should not be given the task of determining who is a legal worker, and who is not. They are correct for two reasons, that it is an unreasonable burden on employers, and it is too likely to facilitate discrimination against "foreign looking" workers. For these reasons, if we do implement an employer sanctions program, there will be a need -- in the long run -- for a secure system, either based on a labor market card (to be used only when seeking a job or UI benefits) or a call-in system, much like that used for credit card confirmation. Either of these systems would eliminate the element of employer discretion -- which is time consuming to the employer and potentially dangerous to some U.S. workers. The problem, however, is that it will take years to set such a system in motion. If there is to be an employer sanctions program in the meantime, there must be another approach and the balance of my testimony is a proposal for an interim program. This proposal, I might add, resembles, but does not mirror, that of Senator Huddleston.

The proposal draws on a precedent in another field; the work done by the State of California to prevent illegal aliens from drawing welfare benefits. That program revolves around the requirement that would-be alien beneficiaries must complete a form about their alien status which, they are told, will be sent to INS for verification. The County of Los Angeles, alone, annually saves more than $50,000,000 in welfare benefits when about a fifth of the alien applicants self-identify themselves as illegals by refusing to complete the form. I am indebted to Sheila Brand, of the HHS Inspector-General's Office for asking me the other day, "Why can't we figure out some adaptation of the Los Angeles form instead of using a worker identity system?" Why not, indeed?

Program Description. The program we have in mind is a variation of the new-hire reporting system which we have discussed elsewhere. It would be based on a document to be completed by all new workers (along the lines of Exhibit I); both workers and employers are told that a copy must be filed with INS.

Workers are told that if they fail to fill out the form, they will not be hired; if they make false statements on the form, they will be subject to fines and prison terms. Employers will have an obligation to secure a form from each new hire* after a date certain; failure to file will be a civil offense, initially, and perhaps a criminal one if the violation becomes a pattern.

Such a program would -- were it credible -- tend to discourage illegal alien employment. We visualize the following scenarios:

- Most employers, including some who had hired illegal aliens in the past, would take the program seriously (we assume) and would ask new workers to complete the form.
- Many illegal aliens, we also assume, would not risk completing the form, and would seek an employer who would not make this demand, or leave the country.
- Illegals bearing counterfeit green cards would agree to complete the form, and would hope that their numbers would not be checked.
- Some employers would collude with their illegal employees and tell them how to lie to the government. (The form is complete enough so that the illegal is forced to lie about himself (his place of birth, for example), as well as to lie about his legal status in the U.S. to complete the form.)

There are techniques, described below to detect both counterfeit green cards and all but the most skilled alien-employer collusion.

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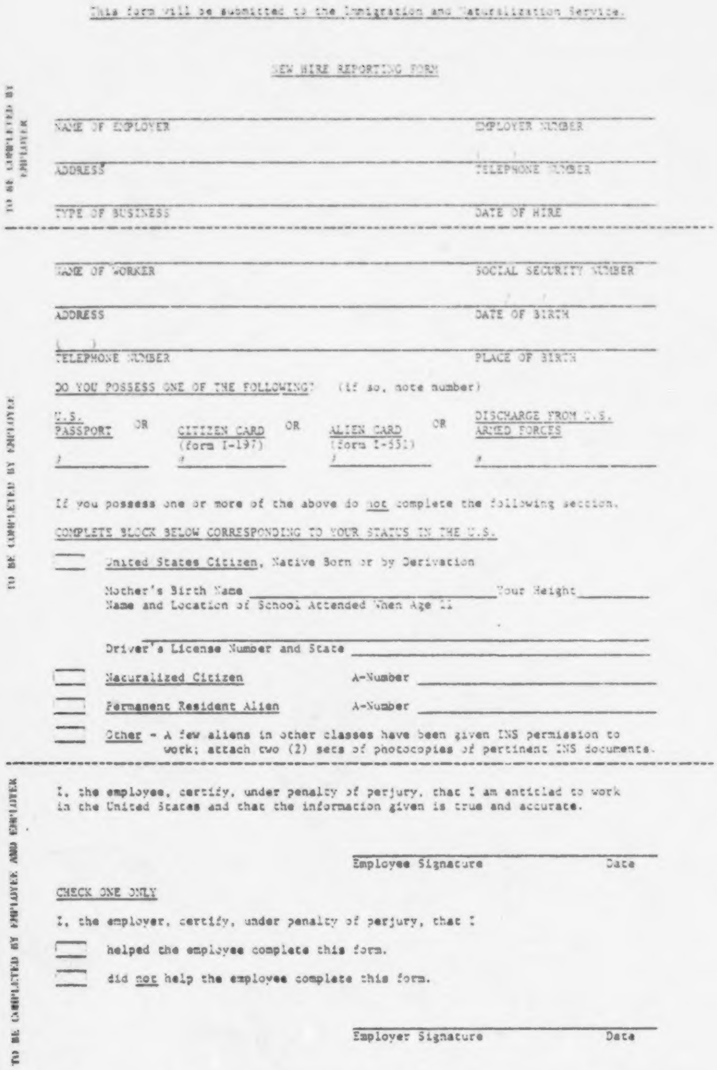
*New Hires are defined as persons who were not listed in the previous quarter as an employee for whom the employer had withheld Social Security taxes. Workers who had been employed previously, but not in the previous quarter would also be viewed as new hires.



This form will be submitted to the Immigration and Naturalization Service.

NEW HIRE REPORTING FORM

TO BE COMPLETED BY EMPLOYER

NAME OF EMPLOYER ____ EMPLOYER NUMBER ____

ADDRESS ____ TELEPHONE NUMBER ( ) ____

TYPE OF BUSINESS ____ DATE OF HIRE ____

TO BE COMPLETED BY EMPLOYEE

NAME OF WORKER ____ SOCIAL SECURITY NUMBER ____

ADDRESS ____ DATE OF BIRTH / / ____

TELEPHONE NUMBER ( ) ____ PLACE OF BIRTH ____

DO YOU POSSESS ONE OF THE FOLLOWING? (if so, note number)

U.S. PASSPORT # ____ OR CITIZEN CARD (form I-197) # ____ OR ALIEN CARD (form I-551) # ____ OR DISCHARGE FROM U.S. ARMED FORCES # ____

If you possess one or more of the above do not complete the following section.

COMPLETE BLOCK BELOW CORRESPONDING TO YOUR STATUS IN THE U.S.

☐ United States Citizen, Native Born or by Derivation

Mother's Birth Name ____ Your Height ____
Name and Location of School Attended When Age 11 ____

Driver's License Number and State ____

☐ Naturalized Citizen A-Number ____

☐ Permanent Resident Alien A-Number ____

☐ Other - A few aliens in other classes have been given INS permission to work; attach two (2) sets of photocopies of pertinent INS documents.

TO BE COMPLETED BY EMPLOYEE AND EMPLOYER

I, the employee, certify, under penalty of perjury, that I am entitled to work in the United States and that the information given is true and accurate.

____ Employee Signature Date

CHECK ONE ONLY

I, the employer, certify, under penalty of perjury, that I

☐ helped the employee complete this form.

☐ did not help the employee complete this form.

____ Employer Signature Date

Enforcement of the program would be all-important. Sufficient clerks to screen strategic samples of the forms would be needed -- say a clerical staff of 800; and sufficient investigators, say 1200, would be needed for full-time work on the program. We assumed these staffing levels for the enforcement program that follows.

The first level of enforcement deals with the new-hire reporting forms. We assume that there will be 70,000,000 or so of these filed annually, and that they would be filed in the several score district and subdistrict offices of INS. A geographic sampling system would be devised so that a majority of the envelopes would not be opened -- none (or only a small sample, for instance), would be opened in the states of Mississippi, Alabama, and Tennessee, and only envelopes posted in St. Louis or Kansas City, would be opened in the State of Missouri.

A rough screening technique would then be worked out (and changed in the light of experience) to select forms worthy of further attention. Young male aliens, for example, could be chosen for further screening, as would persons who do not know the county of their birth, or the name of the school that they attended in fifth grade. Similarly, persons who indicate that they were helped in the completion of the form would receive additional processing.

The rough screening would produce a million or so forms for scrutiny. In cases where A numbers were noted, the INS computer terminal would be asked to confirm the person's legal status in the country. Long distance phone calls (or WATS lines) would be used to check on names of schools and the existence of birth certificates. The process would identify three groups of reports:

- o those apparently correct;
- o those that were incomplete -- followup letter would be sent both to the employer and to the worker, at the latter's home address;
- o those that were likely to be fraudulent -- these would be referred to INS for on-site investigation.

All scrutinized forms would be filed by employer. Concentrations of scrutinized reports in the file of a single employer would flag that employer for additional attention.

The filing of the hiring reports with INS would be regarded as an important source of leads for INS, and the mailing of letters asking for more information would remind employers that their filings were being examined. The principal enforcement activity, however, would take place in the field, and the principal, but not the only, responsibility would fall on to INS. We also propose that Employment Standards enforcement personnel and IRS field agents play a supporting role in the enforcement of the law.

The employers would have the responsibility of maintaining a file of new-hire reports for all workers hired after a date certain. They would also be required to retain the copy of the IRS form 941 for the date certain. (This document, required of all employers paying Social Security taxes, lists the names, Social Security numbers (SSNs), and covered wages for each employee in each quarter of the year.) A government investigator visiting an employer say four months after the date certain could expect that the names of old employees would be on the 941, and of new employees in the new-hire reports file. The investigator would examine both files and then ask a sampling of the workers to identify themselves. One or more instances of workers who could not be linked with either the 941 or the new-hires reports file would suggest that the employer had failed to file the reports, which would be a violation of the law. This comparison of actual workers to workers reported to the government could be conducted by agents of INS, IRS, and ESA.

Another type of investigation would be that conducted by INS and initiated either by information developed in the new-hire reporting system, or by INS knowledge that the employer in question had hired illegal aliens in the past. In this case all employees hired after the date certain could be interviewed, against their filed statements, and on-the-spot determinations could be made regarding the presence or absence of illegal aliens. Those apprehended would be removed by INS as they are now, but there would be a difference, in that the illegal who lied to the government would be separated out for special processing and the employer's records would be reviewed carefully to see if he failed to report new hires, or colluded in the filing of fraudulent reports. Employers would also be subject to prosecution for a pattern and practice of hiring illegal aliens if such persons were repeatedly found on their premises, despite the fact that the employer had seemingly not violated the reporting requirements.

An optional additional enforcement tool would be the mandatory posting, each quarter, of a portion of the previously mentioned 941 form.* (See Exhibit II for our proposed variation of this form for posting.) The portion of the form to be posted would only include the first five digits of each of the worker's Social Security number (and could be produced simply by adding another page to this multiple-sheet form.) No names or wages would be noted. The posting would be accompanied by a simply worded statement that this employer paid Social Security taxes for the following worker numbers (incomplete) in the previous quarter. If a worker did not see the first portion of his number on the list he should check with his employer, or if he feared to do that, he could call the IRS. The objectives of posting relate as much to an effort to avoid the cash economy (a major objective of IRS and the Social Security Administration) as well as to discourage the employment of illegal immigrants. The posting would accomplish the following:

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*This idea grew out of a conversation with Ellen Sehgal of ETA, DOL.

1. It would alert interested workers to the lack of payment of Social Security taxes (and remind them of the importance of such payments).
2. It would give all concerned a rough estimate of the size of the taxable payroll of the establishment -- if the employer had dozens of people working in the restaurant, for example, for only four persons on the 941, it would suggest that something was wrong. This would be helpful to agents of each of the three enforcing agencies, (IRS, INS, and ESA).
3. Notation of the first five digits of the SSNs would give a knowledgeable agent a sense for the use of wrong and impossible SSNs by the workers in that establishment, a practice which is common among illegal aliens.**

In summary, we are suggesting an interim technique for the enforcement of employer sanctions which does not rely upon the creation of a substantial new, nation-wide identification system, nor on substantial expenditures of money. It is a system which would be required for all new hires, and of all but the smallest employers. Every new worker, Anglo, Black and Hispanic, would be required to fill out the same form. Employers would be penalized for failing to complete the reporting requirements, or for colluding with illegal alien workers -- but not for the mere presence of an illegal immigrant on the payroll. And the new form, presumably, would cause changes in the labor market behavior -- it would discourage illegal immigrants from seeking work in the U.S., and would discourage U.S. employers from hiring illegal immigrants who could not complete the form. It is worth trying.

**An impossible SSN is one that has never been issued, such as 123 00 4567 -- there are no SSNs with two zeros in the middle. A wrong number, harder to identify without access to Social Security computers, is one assigned to another person. A sprinkling of 1930-era SSNs in a fast food establishment hiring teen-agers, or a collection of South Carolina SSNs in a Los Angeles sewing factory apparently hiring only Chinese women, would arouse suspicions.

EXHIBIT II

CONTINUATION [illegible] FOR SCHEDULE A OF FORMS 941, 941—M, 9[illegible], OR 943
REPORT OF WAG[illegible] TAXABLE UNDER THE FEDERAL INSURANCE CONTR[illegible]TIONS ACT

FORM 941a (Rev. Jan. 1978)
U.S. Treasury Department
Internal Revenue Service

8190/2001/09/6914

52 0840541 00520843541
TRANSCENTURY CORP
TRANSCENTURY
1789 COLUMBIA RD NW
WASHINGTON DC 20009

Date Quarter Ended 6/30/80 Page Number 1

If this form is used as a continuation sheet for Form 943 Employer's Annual Tax Return for Agricultural Employees please check here ☐

READ INSTRUCTIONS CAREFULLY

Attach only original continuation sheets to your tax return. Do not send a carbon copy to the U.S. District Director of Internal Revenue

EMPLOYEE'S SOCIAL SECURITY ACCOUNT NUMBER	NAME OF EMPLOYEE	TAXABLE FICA WAGES	TAXABLE TIPS REPORTED	TOTAL WAGES	TAXABLE [illegible]
521 12					
034 32					
127 18					
468 46					
226 62					
577 62					
469 54					
551 60					
220 46					
556 56					
137 24					
012 28					
577 78					
073 2[illegible]					
388 35					
121 16					
2 15					
469 34					
162 46					
267 15					
224 17					
090 42					
579 90					
216 50					
491 46					
219 64					
500 54					
228 90					
426 68					
578 96					
561 64					
213 66					
199 40					
301 40					
142 32					
577 64					
2[illegible] 46					
0[illegible] 56					
558 75					
526 70					
327 52					

EMPLOYEES ATTENTION !!

The employer noted above paid Social Security contributions for the workers whose partial Social Security Numbers are written on the left.

Social Security contributions are important for your future and for that of your loved ones. If your number is missing, see your employer or call the nearest local office of the Internal Revenue Service (located in the phone book under U.S. Government.)

TOTALS FOR THIS PAGE Number of employees Taxable wages and taxable tips	NUMBER OF EMPLOYEES	FEDERAL	STATE 43

STATE COPY

Senator SIMPSON. Professor Martin, in your view, what are the shortcomings of the European systems? What lessons could we learn from them, knowing and keeping in clear mind the distinction between our countries, form of government, and all those issues?

Mr. MARTIN. There are three major lessons that come out of the European experience. The first is that migrant labor flows are far easier to start than stop. Once you get family networks linking people with jobs in a rich country and their family back home, migratrion is very, very difficult to stop.

So, lesson No. 1 is that it is very difficult to rotate temporary workers through permanent jobs. The only country that effectively runs a shuttle worker program is South Africa, and that says something about the kind of control system you need to make it work overtime.

Lesson two is that labor recruitment, begun to curb labor shortages, often puts a receiving country on a sort of treadmill—a treadmill in both economic and sociological terms.

The economic treadmill is that there is nothing inherent in the process of making more labor available that automatically gives employers incentives to reduce the demand for labor in the future; in fact, it tends to work the other way. The migrants come into a country, they earn wages, they spend money, and they create the demand for yet more goods and therefore more labor.

In the initial stages you can have people living in barracks or in converted buildings of some sort, but after a while that does not work. Migrants want better housing and you have to build housing. So, point two is the existence of a treadmill effect.

Point three is that migration usually does not reduce inequality, between sending and receiving countries. In fact, the Group of 77 is now claiming that rich nations are stealing their workers and the Crown Prince of Jordan has demanded an international compensation facility—akin to the IMF—which would have rich countries who recruit legal workers or take illegal workers pay compensation to sending countries.

In other words, Turkey argues that Germany took its best and brightest workers and kept them.

Senator SIMPSON. Those are fascinating subjects. When we have that type of legal immigration or temporary immigration and then add to it the issues of refugee problems, that makes a fascinating business, indeed.

Just another question. Are any of the cards or permits that are used in Europe so-called counterfeit or tamper resistant? Is there a problem of counterfeiting or rather rampant fraudulent use of those documents there?

Mr. MARTIN. There does not seem to be as much concern, nor you do not hear as much about counterfeiting there as you do here. The place where the document business comes up most is with the current problem of economic refugees in Germany. Germany has one of the most liberal refugee laws in the world.

The Turkish newspapers, for example, reproduced the German forms with little arrows explaining how to answer the questions. People then fly to East Berlin, walk across the border—the only place in the world where there are no checks on incoming persons—and apply for refugee status by filling out the forms.

These people are not using counterfeit identification, they are filling out legal forms. But appeals typically take 3 to 5 years. During that appeal reefugees are entitled to work permits, money for expenses, and money for housing.

So, instead of the problem of counterfeit documents it is much more taking advantage of a liberal law in the refugee case. In the work case—because there are three separate forms involved and because the police do in fact make sweep checks—they do not usually come up with people having counterfeit documents. Illegals are likely to be people without documents, period. Counterfeiting does not seem to be the problem there that it is here.

Senator **Simpson**. Just one final question and then I want to ask some of Mr. North. Was there public opposition to any type of employer sanctions or identifier system, as you perceived it, in those countries, or alleged discrimination? I am fully cognizant, again, of the differences in the systems.

Mr. **Martin**. Actually, one major difference is that employers are bound together in much tighter employer organizations. The enforcement people get many of their complaints from other employers who complain that so-and-so is using illegal workers.

So, the employers do an awful lot of complaining about each other, as opposed to anyone else. There has not been the perceived problem—perhaps for a variety of reasons—with discrimination against people in terms of using these particular forms.

Senator **Simpson**. That is interesting. That informer system is a very real part of what is happening in this country today. I know from the subcommittee's mailbag and my mailbag, people who are involved in the issue say, someone has a bunch of illegal aliens and you ought to do something about it. I guess that will always be a great part of any kind of system where people are misusing the system. I think the INS hears that from our congressional offices and then simply, "bam" you hear that there has been a sweep, an apprehension.

Sometimes you get a letter back, "Thank you for doing that," and I say, "No, I did not have anything to do with that. I just sent your letter on to the INS." I am not looking for that accolade.

I have very few questions. The affidavit system that you expressed, what is your estimate of the additional cost that that system might impose upon the INS, Mr. North?

Mr. **North**. First of all I would suggest that we bear in mind—and I am sure you have—that if there is a serious problem, be it a shortage of water or shortage of electricity, of energy, some serious thoughts are expended to cope with that problem.

My thoughts are that the system that I have outlined here, though not as secure as a card system or an identity system, and perhaps not as foolproof against discrimination by employers against the foreign-looking workers, that such a system could be set in motion through the hiring of a 1,000 or 2,000 additional employees. That probably, at $20,000, $25,000 a person comes to the nice round number of $40 or $50 million.

However, $40 or $50 million a year is somewhat less thunderous than some of the other costs I am sure you have heard in connection with establishing a fully secure system across the country.

It could be effective quite quickly, which is one of its advantages, as opposed to waiting for a system to get into place where all American workers—which is probably where we should go in the long run—are identified in some system.

Senator **Simpson**. Many persons have commented that the communications grapevine among the illegal population rivals that of the most advanced communication system known to mankind, and that any weakness in the U.S. immigration enforcement is quickly disseminated through that grapevine, that network.

I think a case in point would be the speed with which word has gotten out during the last few years concerning how easily the asylum adjudication methods can be abused, allowing persons then to remain indefinitely in the United States. Those applications have shot up from 440 ten years ago to 5,800 two years ago, and 95,000 this year with the prospect of another 54,000 next year to be added to that.

So, when we talk about refugee obligations I keep throwing in the fact, we must consider what is happening to the system.

But since the efficiency of the system you propose is based upon the deterrent effect of possible INS checks of documents, how would you counter the objection that within a short period of time the illegal immigrants would get the word back that most applications were not being checked and they could then get back to business as usual. What is your thought on that?

Mr. **North**. First of all, the system in California that I have mentioned to you, that is particularly vigorously applied in Los Angeles County, has been in place for a number of years. It continues to be, apparently, news to a number of people who have come into the Department of Public Social Services in Los Angeles County to apply for welfare benefits. They continue to react in the same way, which is to withdraw their applications.

I think that any system is designed for a mass impact rather than its ability to withstand the machinations of the wiliest of the opponents of whatever that system. So, I am not suggesting that this system is foolproof. I am suggesting that it will be effective in perhaps a large percentage of cases.

Second, that if such a system were in fact supported by 1,000 additional investigators and clerks, and if the enforcement of the system were—as it probably would be—focused at particular areas of interest, particular classes of interst—young males, for instance—in the major cities of the United States; if it were focused at particular kinds of problems with filling in the forms, I think it could be quite effective.

Senator **Simpson**. One final question. Under the system you propose you state that employers would also be subject to prosecution for a pattern or practice of hiring illegal aliens if such persons were repeatedly found upon the premises, despite the fact that the employer had seemingly not violated the reporting requirement.

How might you respond to the assertion that such a policy might indeed cause an employer to begin to discriminate against an applicant who looked or sounded foreign, regardless of the seeming legitimacy of their identification which is something that continues to popup, especially and assuredly so as a concern of the Hispanic community?

Mr. North. I think that is a very real concern of mine. I do not really have an easy answer. One technique would be to look at patterns of collusion as opposed to patterns of employment practice, so that you would be looking at a much more precise kind of activity, and to focus your enforcement activities on those patterns of collusion.

The form and the system we have described is designed to make collusion difficult and make it fairly obvious if there is any investigator time spent on it. So, perhaps the focus should be on collusion as opposed to patterns of employment practice.

Senator Simpson. Well, you both presented us with very fascinating additional material for the record, and I am very appreciative of that.

There will be written questions submitted in addition to these, and the subcommittee members may likely have written questions. One of the problems today is that the Senate is not in session and therefore there was a change in schedules for many.

It was a very fine hearing of very fine witnesses. I appreciate the materials and the information that have come today. So, I thank you.

At the next hearing we will go into the issues of asylum, and adjudication procedures. The subcommittee is available to furnish you those agendas as to how we are going to proceed in a very busy month of processing through the entire issues that are confronting us.

So, I thank you very much. That will conclude these proceedings and I thank you for your attendance and your courtesy.

[Whereupon, at 3:55 p.m. the subcommittee adjourned, to reconvene subject to the call of the Chair.]

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